# Supreme Court of the United States

OCTOBER TERM, 1973

## No. 73-38

UNITED STATES OF AMERICA,

*Appellant,*

—v.—

MARINE BANCORPORATION, THE NATIONAL BANK OF COMMERCE OF SEATTLE, WASHINGTON TRUST BANK, AND JAMES E. SMITH, COMPTROLLER OF THE CURRENCY

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

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[193] AFTERNOON SESSION

1:30 o'clock p.m.

THE COURT: All right, you may proceed.

MR. VERVEER: Your Honor, at this time we would like to call Mr. Warren P. Cooley as our next witness.

WARREN P. COOLEY,

called as a witness on behalf of Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VERVEER:

Q Would you please state your name?

A Warren P. Cooley. I live at 714 West Sandaval Place, Thousand Oaks, California.

MR. VERVEER: Your Honor, we have a resume of Mr. Cooley's professional qualifications.

THE COURT: I am reading them.

MR. VERVEER: We would like to have the resume inserted into the record at this time, your Honor.

(Resumé here)

THE COURT: All right.

Q (By Mr. Verveer) For whom do you work?

A Economic Research Associates, 1100 Glenden Avenue, Los Angeles, California.

[194] Q What is Economics Research Associates?

A Economic Research Associates is a for-profit management consulting organization which conducts market and economic feasibility studies in such areas as recreation, tourism, land use and real estate economics, economic analysis for communities, and corporate planning.

Q What are your responsibilities with ERA?

A My staff title is senior associate, and I work in two basic areas, in the area of recreation, tourism, and economics, for which I am directly responsible for winter resort studies that we get involved in, and also public recreation areas and facility studies in which we are

involved. In addition, I do a bulk of the work in world fairs and international expositions, and I am also the manager of comprehensive health planning, for Economics Research Associates.

Q What is recreation and tourism economics?

A Well, recreation and tourism economics in our firm deals with market and economic feasibility studies for basically leisure-oriented attractions and industries, and it is broken down into sub categories, world affairs and expositions would be included in that general heading, winter resort areas, public parks and recreation facilities, public sporting stadiums and [195] arenas, those are basically the areas that are involved.

Q Does your firm have any background in preparing studies and making projections for international expositions and world fairs?

A Yes, since 1960 we have prepared studies for all or major parts of each of the world's fairs that have been held in North America. For the Century 21 Fair in Seattle we were the market and economic consultant. Then for both the New York World's Fair in 1964 and 1965 and Expo '67 in Montreal in 1967, we conducted studies for the monorail transportation system. We were the market and economic consultants for HemisFair in San Antonio in 1968, and we were one of the market and economic consultants for the proposed Philadelphia bicentennial celebration which was to take place in 1976, and we have also been the market and economic consultant for the Expo '74 in Spokane.

[196] Q Have you ever worked in any of these studies?

A Yes, I was involved as part of the team that did the work, some of the work for the bicentennial exposition which was to be held in Philadelphia, responsible for the work done on the 1974 Spokane Exposition.

Q Are you the author of the report on the Spokane Exposition in 1974?

A Yes, I was.

Q Is Government Exhibit N for identification that report?

A Yes, it is.

Q What is the title of the report and when was it formally presented?

A Well, it was Plan and—Plan and Feasibility of Proposed Spokane Ecology Exposition. It was formally presented on September 16, 1970.

Q Your Honor, I think that this would be an appropriate time for any voir dire.

THE COURT: Do you have any voir dire, Mr. Moen?

MR. MOEN: No voir dire at this time.

THE COURT: All right, we will wait until cross-examination, is that right, Mr. Moen?

MR. MOEN: All right.

THE COURT: Was this report presented to Mr. Lindsay?

THE WITNESS: Yes, sir.

[197] THE COURT: Do you know who Mr. Lindsay is, counsel?

MR. VERVEER: No, sir, I don't.

THE COURT: Well, he's in the banking business at Spokane, a competitor of the banks over there now. He is I think in the Lincoln Building, isn't it, Lincoln Savings & Loan.

MR. VERVEER: Is he a mutual savings banker?

THE COURT: Right next to the courthouse.

MR. VERVEER: Well, in that case we would contend he is not a competitor, your Honor.

THE COURT: All right.

MR. VERVEER: What is EXPO 74?

THE WITNESS: EXPO 74 is a world exposition to be held in Spokane in 1974 from May 1st through October the 31st and it is a concept which incorporates education and recreation into one attraction which has a projected entertainment appeal to 4.6 million persons.

Q (By Mr. Verveer) Where will EXPO 74 be located?

A The site is in the area which includes Havermale and Crystal Island and downtown Spokane and the Spokane River as well as the north and south banks of the river. It extends from approximately Trent to Division Street and the site itself, excluding parking, roughly is 52 acres.

[198] Q What would be the major attractions of the exposition?

A The major attractions will be exhibits which will tell a story around an environmental theme and there will be rides and amusements and on-site entertainment as well as planned entertainment to take place in the area or in areas throughout the community, and visitors' services and facilities such as beverage outlets, merchandise spots and so forth.

Q Who are the major exhibitors at the Fair?

A At this point, the international exhibitors who plan to participate are the Soviet Union, Japan, Iran, Korea, Mexico and Canada. As for domestice industrial parties, I understand that over the weekend, it was announced that Ford will participate in Expo 74, and I understand that negotiations are under way are other domestic exhibitors.

THE COURT: Well, would General Motors, do you think, come in now that Ford has come in?

THE WITNESS: I would hope so.

THE COURT: Very well.

Q (By Mr. Verveer) Describe how EXPO 74 has come about.

A Well, in the spring of 1970 there was to be a regional fair and the group that we had did study for it was the Spokane Centennial and they had a number of goals and some of the goals—one of them was to sponsor [199] and to hold events which would have to do with the redevelopment of the site which was previously described, which would be a reason for the removing of the railroads and redeveloping that site. So we were retained to conduct a study as to this regional fair idea with this goal that they had and I was assigned the task to study this. And early in this one of our conclusions was that the regional fair concept really wasn't sufficient in scope that would attract the total facilities to be developed to support or to achieve a greater development of that island area. So our recommendation was that a World Fair be held in Spokane to achieve what we thought would be the redevelopment of that island area there.

THE COURT: The island area that you're speaking of, that is where the old Great Northern depot was?

THE WITNESS: That was the depot and the tracks.

THE COURT: And then since AMTRAC came in and eliminated competition they left Spokane with that unsightly group of railroad tracks there, is that right?

THE WITNESS: That's right.

[200] THE COURT: Go ahead, you were talking about a concept that you first decided that it wouldn't —the overall plan wouldn't attract enough people because it wasn't broad enough in scope. Isn't that what you were saying?

THE WITNESS: Our recommendation was to expand the scope from a regional fair to a world's fair. That was adopted by the Board of Directors of the Spokane Centennial Commission and that specific concept is the thrust of the Government Exhibit N, which was previously referred to.

Q (By Mr. Verveer) What did your study, Government Exhibit N for identification, consist of?

A Well, it consists of six basic parts, the first is a description in loose terms of the concept which was—this is to be—was proposed and to be an environmental oriented exposition. Based on this concept, the market analysis was undertaken and attendance projected.

The basis of this analysis and attendance projection, utilized in defining the market was the vast amount of previous experience we have of the operating experience of other expositions and similar events. We relied on census population figures for current population, state projections for population projections, tourism studies, which were done by Battelle Northwest [201] and the State of Washington. Then derived from these attendance projections were what we call project planning parameters, which are basically sizing criteria telling you how many people will be there on design day—again a term we have devised, which is the day that you design all the facilities in the exposition for, the number of people that will do different types of things so that you can begin to form a development plan. From that we did

prepare a development program and prepare preliminary cost projections for the exposition.

Another portion of the study was to project revenues and expenses during the construction and operation of the exposition. A further item was an evaluation of the economic impact and residual benefits of the Exposition on the Spokane area, and then we did zero in on one residual benefit and looked at it in some detail, which was what impact would a convention center have on the economy of the Spokane area.

Q What are the anticipated major direct economic benefits to Spokane of Expo 74?

A The direct benefits measured were basically three in nature. The first one would be new jobs and payroll, and we defined payroll because we are interested in precisely what this is likely to do in the local [202] economy. So we further refined new payroll to payroll expended in the area, new payroll expended in the Spokane area. So we eliminated those people who would live there during the week and then drive home during the weekends. We didn't count on them spending money on the weekends when they weren't there, for example.

Our projection is that the total expenditures during construction and operation will generate 1300 new jobs and new income expended in the local economy of about 13.5 million dollars.

In addition, there will be materials, supplies, and services that will be required or purchased during the construction and operation of the Exposition projected to amount to another 14.3 million dollars. And a third item would be off-site visitor expenditures and these are expenditures which would be made in the local economy by visitors to the Exposition that wouldn't have been made had the Exposition not been there. These are the off-site expenditures in nature dealing with off-site accommodations, food and beverage off-site, miscellaneous retail purchases off site, and we projected this at 10 million dollars.

So the total direct economic benefit that we project for being derived from the Exposition is [203] about 37.8 million dollars. There are a lot of areas in off-site

visitor expenditures, for example, that we didn't attempt to project—the amount of money that would be expended for gasoline by those people who would be in the area. So it is conservative to the extent that we didn't evaluate those factors.

Q Would these expenditures have any further effect on the local economy?

A Yes, it is our projection, and I think conservatively so, that that money is going to turn over three times in the economy before it finally exits and goes to outlying areas and it doesn't have any effect. There is the original expenditure by the visitor for the services that he buys, that's a turnover of one, then that person he buys services from has to pay his help and buy services and supplies and that money turns over, so we feel that a turnover rate of three is conservative, but that is the rate that was applied to the direct economic impact to —applying that to the direct economic impact, and we come up with a total economic impact of approximately 112 million dollars in the local economy.

Q Are any residual benefits anticipated?

A The residual benefits again are three in nature. There is the first benefit, that is the redevelopment of [204] the island areas. The Exposition site is in direct conformance with the Spokane River front plan, which is a plan to redevelop the river for a ten or twelve mile stretch, the heart of which exists in downtown Spokane. So that would be accomplished through the Exposition.

The State of Washington is building a seven and a half million dollar performing arts convention center complex, which is their contribution to the Exposition, and that will remain and have a long-term lasting impact on the community.

Thirdly, the US government has approved in concept and appropriated funds for the development of an eleven and a half million dollar pavilion of their own, and after the Exposition, this pavilion will be converted to a tourism center, ecology education center, outdoor recreation center and these types of uses.

So those are the three basic residual benefits that would be derived, quantitative benefits that would be derived.

Q Do any of these residual benefits have any important economic applications?

A They all do, I am sure. The only one we measured in our report was the convention center, and we projected that the existence of the convention center [205] will enable Spokane to attract an additional 40 conventions a year from what they are currently attracting, and the effect—the direct economic impact of this will be new money into the community of about 1.8 million dollars a year, and when you apply the multiplier of three again, you come up with a total economic impact of 5.4 million dollars.

Q Has there been any work on a supplemental or an amended study since it was initially presented?

A We have continued since our original study in 1970 to work for the Exposition. Subsequent to the original feasibility study, we did an in-depth financial analysis updated financial analysis, and we incorporated some new developments, cost figures which had been prepared through a master plan that they had done subsequent to our original study. And then in January of 1972, it would have been a year ago now, we were placed on a monthly retainer by the Exposition to function as a day-to-day market and economic consultant. So we have had a continuing relationship with them since the original study and I have continued to be that person involved and responsible for this work, and we did—an interesting note, we did recently undertake an attendance update. We had to look at the Exposition in rather loose terms initially because it wasn't well [206] defined in terms of what it would be. Well now, now it is very well defined and it will take place, so we undertook an attendance update in which we increased our potential attendance projections from 4.6 to 5.1 million. However, because of the physical capacity in Spokane of hotel and motel rooms and projecting the number of rooms that are likely to be built by 1974, it appears that the capacity of the area won't enable the Exposition to attract any more than

about 4.6 million. So we are still holding to that original projection.

[207] Q How do present expenditures coincide with the expenditures which you have projected in your study?

A In our original study we projected that there would be roughly forty million dollars expended for the Exposition. To this point in time our definite commitments of approximately thirty-five million dollars which have been made, which are composed of seven and a half million dollars from the State of Washington, eleven and a half million dollars from the Federal Government, 5.5 million dollars from the City of Spokane. The EXPO 74 Corporation will spend at least seven and a half million dollars in the Exposition. There is a current request in the Washington legislature for four million more dollars, and I won't project how that will come out.

THE COURT: You are a diplomat.

A (Continuing) Add all of those, without the new request from the Washington legislature, there is 32 million dollars definitely committed, and that doesn't account for independent exhibit complexes which would be constructed, the ride and amusement complexes are not included in there, so it appears that our 40 million dollar projection will be achieved in terms of expenditure for the Exposition, physical expenditure.

Q Where in your study can your conclusions be found, the [208] conclusion on the direct economic benefits?

A All of Section 7 deals with the economic benefits that we have talked about, that I have talked about with you today, and they are summarized on page 17. Now the convention center—

THE COURT: When you say Section 7 do you mean that numeral 2, Section 7?

THE WITNESS: Turn to Roman Numeral VII.

THE COURT: All right, I see.

THE WITNESS: And then -17. And then in the back of the report there is an appendix Section A which deals with the convention center, and Table A-8 summarizes the projected economic impact of the convention center.

THE COURT: On that Section VII-17 which is titled New Money Brought Into the Economy?

THE WITNESS: Yes.

THE COURT: All right, go ahead.

Q (By Mr. Verveer) What has been your firm's experience in preparing its projections in events similar to EXPO 74 as to the actual attendance and gross revenue figures?

A Fortunately, a high percentage of the time we have been conservative. We attempt to be, whenever we have a choice to make we attempt to be on the conservative side, and I think that the fact that we have stayed in business [209] as long as we have and have continued to be retained for these events and attractions is a good track record that we have done that.

For example, Century 21, we were only two or three per cent off on our attendance projections, and we were 30% low in our gross revenue projections. In EXPO 67, we were about 30% low on attendance projections and only 9% off on revenue projections, and HemisFair, we were 1% high on the revenue projections. So I guess if you look at what is a good figure to use, if you look at all of the recreation attractions that we have done studies for, as to attendance and gross revenues, there is a range of 10 to 15 per cent that we are typically on the conservative side.

MR. VERVEER: I have no further questions.

THE COURT: Do you have any questions of this witness, Mr. Moen?

MR. MOEN: Yes, I think I might ask him a few questions.

## CROSS-EXAMINATION

BY MR. MOEN:

Q Mr. Cooley, over what period of time will this money be spent?

A Well, it was projected in the original study that it [210] would be expended over basically a three-year time period, four-year time period, '71, '72, '73, and '74. Under

no circumstance will it be expended after, will the economic impact that I indicated previously be expended beyond 1974, that is when the Exposition ends, with the exception of the convention center, which has a long term residual benefit of 5.5 million dollars.

Q In your study did you make any projection with respect to population growth?

A Yes.

THE COURT: I was going to ask that. Go ahead.

Q (By Mr. Moen) And what did you discover?

A Well, we divide our market areas in terms of zero to 50-mile radius, 51 to 100 mile radius, and categorized it into those kind of market areas, and I would have to refer,—we projected a growth in all instances, and the Spokane area itself, projected growth was for a conservative study growth rate.

Q Did you make any studies with respect to unemployment existing in Spokane?

A That was really not a major part of our study, however we did look at unemployment when we were evaluating the new job potential in the area.

Q What is the economic base of Spokane?

A What is the economic base of Spokane?

[211] Q Yes.

A It would be conjecture on my part.

Q Will EXPO 74 add anything to the economic base of Spokane?

A Well, it certainly adds new money into the economy, which filters down into the tourism and services industry.

Q Isn't that a very temporary sort of thing?

A That is true, except I go back to the long term impact, those activities, those facilities which create a long term impact.

Q What type of an impact is going to be created over the long term growth?

A Expenditures, speaking directly for the convention center, the expenditures for overnight accommodations—

Q Isn't it mostly a matter of developing the motels?

A No, there would not need to be new motels.

Q Wouldn't that be a natural outgrowth of EXPO 74?

A I will say that that is directly dependent upon a long term load that could be supported in the area.

Q Isn't the whole purpose of the thing mainly a tourist attraction?

A Define what you mean by tourist attraction.

Q Well, I mean drawing power, a drawing card for people to come in and visit Spokane?

[212] A Well, the basis of support for the Exposition itself, more than 50% of the vistors will be residents who reside within roughly a 200-mile radius of the Exposition. About 60% of the total vistor days will be generated by those who reside there. It does exist, one of the benefits will be an attraction to the area for a six-month time period of vistors who would not normally come to that particular area. But the benefit in terms of the Exposition itself, I did not quantify that as a long term benefit, I don't envision that as a long term benefit, as I envision the redevelopment activities which have taken place and the residual benefits added to the community as being the long term benefits of the Exposition.

Q Isn't the long term benefit the beautification of Spokane? Isn't it to make it a more pleasant place to live?

A Well, I would guess that that would be one of the things, yes.

Q Have you made a study as to what the effect would be on the banking industry?

[213] A No.

Q Are you familiar with the report filed by the Federal Deposit Insurance Corporation for 1966, 1968 and 1970 showing the growth and total commercial bank deposits in the San Antonio, Texas area?

A No.

Q I have no further questions.

THE COURT: Mr. Hartman, do you have any questions?

MR. HARTMAN: I have a couple of questions, your Honor.

THE COURT: All right, I don't want you to underrate him. I think you know what my feelings are. I think that he has been a fine witness, giving good answers as to what would happen to Spokane. I would like to see Spokane do real well as a result of this. I don't want you to tear him down.

MR. HARTMAN: Very well, your Honor. Well, what did you receive your Bachelor of Science degree in?

THE WITNESS: Bachelor of Science degree was one specializing in recreation and education and—

Q How about economics, did you have any courses in economics?

[214] A I had courses in ecomonics but no specialization in economics.

Q Statistical work, have you had any statistical work?

A Graduate work in statistics.

Q What was that in statistics?

A Well, in park administration programs.

Q What kind of work would be involved in park administration or recreational administration programs?

A Very typical standard statistical courses and analysis from the standpoint of administration and all of those other theoretical things that we don't use in our business anyway. These processes of business judgment or oriented type of business we don't use. These and other theories about economics and those types of things, percentiles and theories.

THE COURT: Well, I think you've accomplished a great deal of things. You'd better quit.

MR. HARTMAN: Yes. The only thing is, your Honor, I would have objection to this document going into evidence, Plaintiff's Exhibit No. N.

THE COURT: Well, it really may not be pertinent, but I'd like to read it so I am going to admit it. You understand that I am assigned both to the Western and the Eastern Districts of Washington?

MR. HARTMAN: Right, your Honor.

[215] THE COURT: I like the Eastern District and I like to read good things about the Eastern District.

MR. HARTMAN: Yes, your Honor.

MR. VERVEER: Your Honor, at this time the government would move for acceptance into evidence of Government's Exhibit No. N.

THE COURT: Well, I've already admitted it before you moved, I guess—all right. Have you any more questions of this witness?

MR. VERVEER: No, your Honor.

MR. MOEN: No further questions.

MR. HARTMAN: No more questions, your Honor.

THE COURT: Well, this wouldn't be pertinent I guess, in the case so I won't ask it, so you can be excused.

(Witness excused)

MICHAEL MARSTON,

called on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q I have a copy of Mr. Marston's resume that I would like to have distributed and inserted into the record at this time.

(Insert resume.)

THE COURT: Do you have any other witnesses [216] after this one? And the reason I ask is that Mr. Silverman is not going to get a turn.

MR. HOFFMAN: Before I begin with Mr. Marston's interrogation I would like to inform the Court first that plaintiff withdraws its exhibits No. 0-12, through 0-18 inclusive.

THE COURT: Well, what do those relate to, counsel. I'd just like to know.

MR. HOFFMAN: Those are exhibits comparing Spokane County with certain other areas of the State of Washington in various ways.

THE COURT: Is there any objection to his withdrawing them, Mr. Moen?

MR. MOEN: No objection, your Honor.

MR. HARTMAN: No objection, your Honor.

THE COURT: All right, your motion that they will be withdrawn is granted but they are just for identification as of now?

MR. HOFFMAN: Yes.

THE COURT: You never offered them so you don't have to withdraw them—

MR. HOFFMAN: Just to inform the parties I'd like to withdraw Plaintiff's Exhibits Nos. 0-20, 21, 22, 23.

THE COURT: You're not offering those?

[217] MR. HOFFMAN: Right, and I think, your Honor, before I begin with Mr. Marston's interrogation or examination I'd like to inquire of defendants' counsel whether they have found any mathematical mistakes in the statistical exhibits, Exhibit No. O.

MR. JOHNSTON: We would have to have our people who examined these to be able to tell.

MR. MOEN: There are a number of mistakes, your Honor. I don't know if I could identify them by exhibit number but I can assure counsel that we will find out what they are and tell him.

THE COURT: Well, I'll tell you what you do, counsel, if it comes up and there is a claim that you made a mistake why I'll give you an opportunity to rehabilitate by calling another witness if you wish.

MR. HOFFMAN: Well, we'd like the opportunity and would appreciate an opportunity to cure any mistakes if there are any.

THE COURT: I'll grant that if there's any question about that. All right—

MR. HOFFMAN: Now, would you restate your name?

THE WITNESS: Michael Marston.

Q Where do you live?

A I live at 1730 Laverd, Berkeley, California.

Q Mr. Marston, what is your occupation?

[218] A I'm a partner in an economic consulting firm known as Keyser-Marston and Associates.

Q When was this firm organized?

A This firm opened business on Tuesday of last week, the 2nd of January, 1973 and prior to that time I had

been executive vice-president of the Urban Economics Division, Larry Smith and Company Incorporated and vice-president of Larry Smith and Company Incorporated for nine years. That firm, which is a nationwide economic and real estate consulting firm which has offices in, five offices in this country and two in Canada and three affiliated offices in Europe.

Q. How long were you with Larry Smith and Company?

A It would have been nine years on the 20th of this month.

Q Would you give us some examples of the kind of work that you did when you were with Larry Smith?

A Well, when I was with Larry Smith as shown on the resume I've had major analytical and supervisory experience in community development type of economic base studies and we had very large projects that I secured for the company; for example, in a city in the southwest and it was on a nationwide bid competition where our budget was three-quarters of a million dollars and our work program was specifically to identify the [219] economic base for this immediate area and the region, and how this regionally related to the idea of strengths and weaknesses within the economy and opportunities for capitalizing on the strengths and so forth.

Q Is that—well, do you call that a base study?

A Yes, that's a term, base study is a very loose term that covers a multitude of sins. Simply, it is our main thrust to create a process which helps communities or regions solve economic problems or at least minimizes their negative impact. Well, for example, we made an economic base study of the Genessee Lake region which was a 12-county region in New York State to identify strengths and weaknesses. We did analytical research but we do not do pure analytical research for research sake.

Q Did you participate in a project for the State of Idaho?

A Yes, I have.

Q Would you describe what that involved?

A Well, we were selected and I was the principal in charge on a competitive basis to identify the impact of the

relocation of the Lewiston Hill portion of US Highway 95 and the impact that that would have on the City of Lewiston, Idaho and adjacent areas. We started [220] this study in 1970 and had to look at a full range of land uses from retail to industrial to port development to grain shipments. I think at this point is when I first became aware of the term—inland empire. State of Idaho officials were concerned about the impact of expenditures from within the state that were lost to Washintgon State and particularly Pullman and Spokane.

THE COURT: That hill you speak of, that comes from Uniontown to Lewiston, is that what you are talking about?

THE WITNESS: Yes, your Honor, that's right.

Q Did you do work for the Seattle-First National Bank?

A Yes, our firm was retained to estimate the financial feasibility of building a new headquarters office building. The basic thrust of the assignment was how much market there would be to justify or as large a building as could be supported by the market from the point of view of good planning. I was personally responsible for all analytical efforts on that project. That building has since been built following, as I understand it, quite specifically our recommendation and has been successfully occupied.

THE COURT: I didn't quite get that last part [221] of your answer. Do you mean the percentage of occupancy is in accordance with your predictions, is that what you mean?

THE WITNESS: Right. It is a little hazy. I did that work in 1966.

THE COURT: It's a new Sea-First Building in Seattle that you're talking about?

THE WITNESS: Right.

MR. HOFFMAN: Will you speak a little louder. We're having a little trouble over here hearing you.

THE WITNESS: Well, I am having a little trouble. I have a minor cold.

THE COURT: Do you want to turn on the microphone, Mr. Hanson?

MR. HOFFMAN: Now, Mr. Marston, will you describe your educational background?

THE WITNESS: I did my undergraduate work at the University of California at Berkeley with a liberal arts background with strong emphasis in economics at the undergraduate level and I did my graduate work at the University of London in the London School of Economics where I was a graduate research scholar from 1961 to 1963. I received a degree, an MA, a Master's degree and I graduated from the University of California in 1959.

[222] Q Well, I think this would be a good time for voir dire, your Honor.

THE COURT: Well, do you have any voir dire, Mr. Moen?

MR. MOEN: No, I do not. I would save that for cross-examination.

THE COURT: All right.

Q (By Mr. Hoffman) Have you made any analysis of the growth potential of the Spokane metropolitan area?

A Yes, I have.

Q What factors did you include in your analysis?

A I think we considered all the factors and by that I mean we intended to get as much data as was available specifically to cross check information, and to get this information we'd try and get four and five different data sources and cross check one against the other so that we had as solid a data basis as possible in this case which —In other words, we studied the factors and evaluated labor force and employment characteristics, past population growth trends, Spokane construction activities and compared them with Idaho, the general vicinity and other cities that I have personally been involved in, and am familiar with the terms of others who have unique problems or opportunities.

[223] We also, I think, it would be fair to say have evaluated the Spokane's influence as related to the geographic area that it might have domination in and different types of degrees within—

Q Now how did you prepare your analysis?

A As I summarized briefly before we separated the available statistical data and studied the available statisti-

cal reports and I personally visited Spokane and I interviewed knowledgeable persons based on their—and based on this broad section of data we made projections as to the future employment and population levels. I think a key element that we did was evaluating the past trends to understand this and what would be the factors and what the problems and probabilities of the forces that would be dominating the future of the economy.

Q Would you explain why you chose these factors to make this analysis?

A I think a straightforward answer would be that growth is generated by people and jobs. Except in specific situations. People follow the jobs and specifically the jobs have to be available for the people to move into the area to have the area grow in population or maintain its vitality. There are some exceptions to this such as retirement communities, places such as [224] Palm Springs would be an example. In certain areas in Florida where the people themselves move, bringing outside people into the area and this then creates jobs and services. In other areas, I think that the primary emphasis on population relates to jobs. Then the other factor I mentioned was construction activity. We picked construction activity because we feel that construction is a sign of vitality and people are vitally interested in the future and make commitments for 20 to 30 years' duration.

[225] Q Turning now to Spokane's employment characteristics, would you tell us about past trends in employment and the economy of Spokane?

A Yes. As shown in our exhibit, I think that just an overview, the past trends in employment are shown really over—we picked 1950 to 1972, that time frame for the majority of our analysis. The data base was good, it was comparable, and I think forms on an annual basis by major employment categories the backbone of our analysis related to labor force and employment by major categories in Spokane.

MR. JOHNSTON: He is referring to an exhibit now?

Q (By Mr. Hoffman) You are referring to a table entitled Labor Force and Employment by Major Categories, which the plaintiff has denominated as Exhibit 0-3.

A That's the one I thought we were going to discuss. I'm just giving you a general background, yes, and that's a table which we have specifically compiled to give us an insight into employment.

Q Well, let's go back a minute, and if you would, would you give us a little historical background on the economy in Spokane?

A Well, I think that it flows from the analysis that if you synthesize an analysis and focus it, you could say [226] that Spokane has really gone through four cycles of—I wouldn't use the word "growth", change, let me say. Since 1950, we picked 1950 because before that we had World War II in the 40s and the depression of the 30s, and we think that's a solid representative data base, a 22-year period.

We would categorize, I think, just to give an overview which would be useful, and we could probably get into the specifics later, a period of expansion over the time from 1950 to 1956 period, we call this a period of growth and expansion, then we would call from '56 to '63 a period of recession, then we would say that over the '63 to '67 period we had a period of recovery. Then from 1967 to present we have a new period of expansion. So we are looking probably at four periods that have occurred over the last twenty-two years, and we are currently in a period of expansion.

Q Now I will direct your attention to Plaintiff's Exhibit marked for identification O-3 and O-4, Government's exhibits, did you prepare these exhibits?

A Yes, I did.

Q Would you explain the significance of the contents of O-3?

A I think that Exhibit O-3 assembles the data in a form [227] that can be evaluated to show some of the dominant trends that occurred within the Spokane metropolitan area. For example, I won't cover all the categories. I think I have a couple of them which point out agriculture, which has declined since 1950 from 4.7 thousand to 2.4, 2,400 people, it's almost half of what it was in the 22-year period before. That's fairly standard, that is occurring nationwide, on a nationwide basis. Agriculture is becoming less labor intensive and more intensively

mechanized, and the smaller farms are going out of business.

Probably one of the most—more significant categories here is manufacturing of primary metals. That has had a great swing in employment. This is primarily related to the aluminum industry and has been one of the primary reasons for the four cycles.

I summarized this in overview form previously. So basically we go through this data based on a category by year basis to provide us with conclusions as to the major forces that work within the economy, and we tabulate this with other data and reports that we have and experience in other areas.

The unemployment rate I think is another significant variable here that has fluctuated over the time frame fairly dramatically.

[228] THE COURT: One of the most significant increases is in an area where the taxpayers are unhappy and that's in government, isn't that right?

THE WITNESS: Yes, your Honor, that is typical nationwide.

THE COURT: I understand that, but that has even reached Spokane, is that true?

THE WITNESS: Yes.

THE COURT: When you come to court nowadays with four lawyers, you used to come to court with one lawyer. All right, go ahead.

THE WITNESS: It might be helpful at this point to note that typically the growth categories nationwide are the services, government, trade, and in some cases manufacturing. But basically we are service-oriented. Some people say it is a mature society.

The government surprisingly in California, some of the major growth is at the state level rather than the federal level.

THE COURT: There is another area there too that relates to services, does that mean tourists, doesn't it?

THE WITNESS: Yes, your Honor, everything, hotels, restaurants.

THE COURTS: Hotels, and much more tourism than [229] there was in the 50s?

THE WITNESS: Yes, and that's what many communities have not recognized as being a major growth area. People tend to think of the service industry as being something peripheral, and they keep trying to develop their economy in many communities by going after basic manufacturing plants.

THE COURT: Frankly, those are the only two areas where there has been any dramatic change in Spokane, isn't that right?

THE WITNESS: Yes.

THE COURT: Tourism and the government?

THE WITNESS: Yes, your Honor.

Q (By Mr. Hoffman) Would you explain why you used figures covering Spokane, would you define the Spokane SMSA for us?

A This is a standard metropolitan statistical area, this one was used by the Bureau of Census, and most economists want to define an area where data is collected on a nationwide basis in detail. The SMSA is the basic unit of measurement of the changes in the ten-year census for most large metropolitan areas.

Some metropolitan areas will have as many as three SMSAs. For example, the Bay Area has a five-county SMSA, that includes San Francisco, and that's [230] really the heart of San Francisco and the related suburbs, and then there is one on the south, San Jose, which operates somewhat more independently than the other one, the five-county area, and there is one to the north, that's a two-county area.

I use this because I think it is important to understand that the SMSA is the basic unit of measurement, and in bigger areas that can be subdivided. But here we have used the SMSA which is coextensive with the county and it provides a very good base for evaluation trends on a comparable basis for many years, particularly using a ten-year census for forty or fifty years.

There are other areas that we referred to in the report that I think are probably worth touching on, so there won't be confusion. There's the city limits of Spokane, typically these are not at all valid for doing any in-depth evaluation of past trends or projections in the

future, city limits change their policies of annexation or de-annexation and the growth occurs typically outside of the city limits. So that is really just sort of an historically interesting situation, the city limits, but they are not valid analytically.

Then there is an urbanized area in Spokane, that there are some analytical problems with.

The urbanized area hasn't changed and [231] there has been growth outside it into what has been referred to as the rural area.

Q Are you referring to a table and graphs covering the population growth in Spokane, in metropolitan Spokane from 1950 to 1970?

A Yes, I was using that for the nomenclature.

MR. HOFFMAN: I just wanted to make sure that those were government exhibits—

THE COURT: Actually he has been testifying using that first Exhibit O-1 and O-3, also, as I understand it, is that true? I had to read O-1 and O-3 while he was testifying and I was trying to listen at the same time.

THE WITNESS: I apologize for the confusion.

THE COURT: No, that is fine.

THE WITNESS: I was using the terms as they came up, and if you don't spell them out they are confusing.

THE COURT: That is fine, I have followed your testimony, I am sure.

Q (By Mr. Hoffman) Does the mix, shall we say, of the employment category of Spokane have any significance?

A It is not exactly clear to me what you mean by the question.

THE COURT: You are talking about—

[232] MR. HOFFMAN: The various proportion of emploment in different categories.

THE COURT: Are you talking about the employment in the variety of areas of endeavor over there, agriculture, manufacturing, mining, that type of thing, is that the idea?

MR. HOFFMAN: That is right, your Honor.

THE COURT: All right, go ahead.

A Yes, you are referring to the different categories of employment, the major ones on the table which is Exhibit O-3, and the different categories I mentioned. Agriculture is declining and I think that overall it can be said, looking over the 22-year period, that in 1972 the economy is more diversified than it was in 1950, it is less dependent upon the declining industries such as agriculture. I noted that while agricultural employment dropped by half, it increased from 84,000 in the total civilian force to 118,000, and at the same time the primary metals, the category that created problems in the economy previously, is almost constant with the 1950 level of 3,700, it is now 3,800.

THE COURT: Are you talking about the Trentwood plant? The aluminum company at Trentwood?

THE WITNESS: Yes, the Kaiser plant.

A (Continuing) So the pie has gotten bigger, and some of [233] more volatile elements become smaller pieces of the pie, so therefore the economy is less susceptible to disruption currently than it was during the decade of the 1950s.

THE COURT: Let me ask you about that agriculture situation. When you talk about employment in agriculture, are you referring to farm labor or things such as laboratories that handle the examination of wheat, that sort of thing?

THE WITNESS: No, your Honor, the people whose primary occupation was on the farm.

THE COURT: And that is partially as a result of larger areas under one ownership and that type of thing?

THE WITNESS: Yes, your Honor, and mechanization. Particularly in this area there is very heavy investment in farming equipment.

THE COURT: You are talking about the cost of combines?

THE WITNESS: Yes.

Q (By Mr. Hoffman) I notice on Exhibit O-3 that you used actual raw numbers and not percentages. Did you have any reason for that?

A Yes, it has been our experience that the actual numbers of people employed in jobs is the most valid indicator [234] to compare what has happened on a numerical basis,

the number of people who have gotten jobs or lost jobs by category. The old expression that numbers don't lie, that people lie with the numbers applies to percentages. You can make the percentages prove anything you want. It is something you have to be very, very careful with. I have seen distortions where you take a percentage of a very small base, you have a community growing by 1,000 per cent, but it really amounts to 15 people. So we are very careful of percentages, we use those as a cross check, but we use the numerical growth as the basic analytical units.

Q Would you describe the Government Exhibit marked O-4?

A Yes, in essence I prepared that graphic illustration to show the employment change over the 1950 to 1972 time frame based on that Exhibit O-3. Here we start to get a feel for the periods of growth and decline. The top line shows the total labor force with the dots, as you can see there, and the bottom line total employment, so the width of the line measures in a generalized way the unemployment. The top of the line shows the growth in the labor force, and the bottom of the line the growth in jobs. It shows, as you can see, starting out with about 80,000 in terms employed people in 1950, 84,000 in terms of labor force, increasing to [235] 118,000 in terms of labor force currently, and 108,600 in terms of jobs. It is an S-shaped curve which indicates a volatility in the economy. If you see one of those you have to try to understand what created the problem.

THE COURT: That bears out what you previously told me relative to the period of growth and recession, does it not?

THE WITNESS: Yes, your Honor.

THE COURT: All right, go ahead.

Q (By Mr. Hoffman) I would now like to direct your attention to Government's Exhibit marked for identification O-5. Did you prepare this exhibit?

A Yes, I did.

Q Would you explain what this exhibit shows?

A I think this exhibit really summarizes the period that we discussed, and the underlying causes of the growth and decline by periods. For example, in summary, the

period of expansion, 1950 to 1956, as you look at the bottom of the table, there was an average annual increase of 2,430 people in the civilian labor force, the total employment increased 2,470. In other words, there were more jobs than people coming into the area, so some of the unemployment dropped. The major reason for that was growth in primary metals, 470 jobs per [236] year; trade, 630; services, 280; government 550; and miscellaneous 270. Contract construction played an important part. So that was the period of expansion and probably one would expect the population to grow with that magnitude of jobs being created.

Then Spokane went into a period of recession over the 1956 to 1962 time span. The highlights of this are quite dramatic, total employment went from increasing 2,470 per year in the previous period to decreasing by 800 per year, very dramatic. In the drop, you can see looking under the manufacturing category, lumber declined, that was the main cause, one of the main causes, and that has been happening all over the West, I think, and then the primary metals trade.

Then we go into a period of recovery as shown under the category 1963 to 1967. In this period of recovery, agriculture is declining but the rate of decline in the other categories such as primary metals has actually stopped declining and is now growing by a hundred jobs a year. Trade has stopped declining and has grown dramatically by 580 jobs a year. Services have grown very damatically, 720 jobs per year. It is the fastest growing category in all categories. So we go from a net loss of 800 jobs per year to an increase on an average annual basis of 2100 jobs per year.

[237] THE COURT: This is annual average increase?

THE WITNESS: Yes, your Honor.

A (Continuing) So that is a period of strong recovery. It would vary by year, but it just illustrates the changes most accurately by putting the years together on this basis. Then we get a period of expansion. Starting in 1967, the growth rate is accelerating, we see that the agricultural loss in jobs has dropped to 20 from 180 previously, we are still losing in primary metals, there is a

little turnaround there, but it is significant to note that that does not impede,—we went from an increase of 100 jobs a year to a loss of 120 jobs a year, but the total economy still kept growing at a faster rate, significantly faster rate over the 1967 to '72 time frame, than the 1963 to 1967. What that is showing is that the economy is bouncing back.

So then we average it over 22 years, both the ups and the downs, and even with the dramatic period of recession we still have an average annual growth rate in terms of number of jobs, as 1330 jobs per year for the 22-year period, and a total civilian labor force per year of 1540. This tells us that Spokane did not dry up and blow away over this hard time period, but continued to expand over the total time frame despite a [238] period of severe decline, one of the most severe I have seen in the West.

Q I would now like to direct your attention to Government's Exhibit marked for identification O-6 and O-7. Did you prepare these exhibits?

A Yes, I did.

Q Would you explain the methodology used in making the projections that these exhibits show?

A Yes, in essence the methodology was the technical term referred to as a linear regression, which means looking at the past trends, understanding what they were doing, and projecting on an alternative basis appropriate past trends.

Q Why did you select the linear regression method?

A I think that given the data base, and the purpose of the analysis, this is the most appropriate analytical technique.

Q And your projections go from 1972 to 1985. Would you explain why you used that time period to confine your projections to?

A Yes, that time frame is, the long and the short of it is that it is not too long and it is not too short. We think it is a meaningful projection that will be appropriate for Spokane, that if you carry any projection too far it really gets very, very "iffy", like the [239] year 2000. Typically, we recommend that our projections have to be reviewed every five years. We would like an alternative

basis of projection, because then combining that with an understanding of the forces at work, one can evaluate on a yearly basis what has occurred and how that would influence the projection. We feel that this is a good valid projection time frame in that the forces at work over the past twenty-two years, 1950 to 1972, we think will apply in varying degrees related to the assumptions given for each projection over the 1972 to 1985 period. We feel quite confident that there won't be any major changes that would invalidate projections over this time frame that are not in evidence now in the economy.

[240] Q Would you explain the sets of conditions and underlying assumptions in the exhibit that you referred to just a moment ago?

A Yes. As shown in Exhibit O-7, the low projection takes the one thousand three hundred thirty jobs that we discussed previously, that is, the average annual growth over the total 22-year period from 1950 to 1972, which included a period of expansion, a period of recession, a period of recovery and expansion and said if all of these factors occur, in essence that allows for another recession, we are not saying there will be one, but if it did happen, then the economy would still grow to a total of 125,900 jobs by the year 1985. This is the most conservative basis for projection, and then the medium range projection takes two time frames that we evaluated in the past, two trends, a period of recovery and a period of expansion and it says this is the valid ten-year basis that the—a lot of the factors that caused the recession do not exist to the extent that they did previously in the 50's and, therefore, the basis for a medium range projection is using the last ten years, and that would give us a growth of 1940 jobs a year or a total labor force of 134,000 by 1985.

The high range projection, which is the last alternative future is based on a set of [241] conditions which in essence says Spokane is in a period of expansion. A lot of factors that really have not been quantifiable such as the momentum developed from Expo, the benefits of that, the boost that it gives to the community, the new development in the downtown, the whole range of factors will make this period of expansion continue and perhaps accelerate.

When I was talking with different people in the community, such as King Cole last week, every one had a tremendous feeling of confidence and that really they felt that things were much better now than they were two years ago, and this hasn't shown up statistically yet in any significant way. The high projection would say the good times will continue and by 1985 there will be 139,000 jobs.

So that is the basic alternative future that could occur over the 1972 to 1985 time frame.

Q And the graph, which is Exhibit O-7, is just a—

THE COURT: That is the graph form—that's just what he said.

THE WITNESS: Yes, your Honor.

THE COURT: I have looked at the graph, and just because I closed it doesn't mean I didn't look at it. I read the figures there too before he testified, [242] counsel. All right.

Q (By Mr. Hoffman) Would you tell us which projection you considered the most reliable?

A I think given the occurrence of a recession in the past and the factors that have occurred over the 1950 to '72 time frame, that we would recommend a conservative approach and, therefore, we have used in our analysis the low projection, which would indicate the rate of growth that could occur even if another recession occurred over the '72 to '85 time frame, and we recommend this because it could happen. We think that we don't have really significant data since the '70 census, and this is one trouble with just having a census every ten years to thoroughly document the extent of the expansion that has occurred since '70. So given that situation, it is our recommendation that to avoid the surprises, let's plug them in and use the low projection as a basis for planning for the future, and by surprises I mean negative things that could occur that we might omit at this time because there is still a fair amount of employment in the aluminum industry, which has its problems and so forth.

THE COURT: Aren't they right now trying to put another pot line in, and they are having some problems with the ecology people?

[243] THE WITNESS: Yes, your Honor, I have heard that secondhand, and that is an example of the fact that there are a lot of movements that might try and restrict basic industry, ecology and environmental movements. Perhaps the jobs won't grow as fast as they are currently, in the future.

Q (By Mr. Hoffman) Your low projection takes the possibility of such factors into account?

A Totally, I think. Looking at the numbers, we are projecting a growth of 1330 jobs as opposed to a current rate of 2320, so we are projecting 1000 less just for the reasons I outlined and which we have discussed.

Q We have made some slight reference to this before, but I would like you to explain, if you would, why you use the employment figures for the Spokane SMSA, that is, Spokane county?

A The employment is, we feel, the most valid means of projecting population growth because the people have to eat to live and to eat to live they have to work, and typically, you have something like thirty—36 percent of the population base employed. So if you create the jobs, in general the people will come. If the jobs dry up or decrease, the people move elsewhere.

One example of that might be—there is some evidence to indicate that people are moving or have [244] moved in the last few years from Seattle to Spokane just because things are a little better despite a relatively high unemployment rate in Spokane compared with the rest of the country. You just may be able to get jobs more readily in Spokane than Seattle. I can't quantify that, but it is this level of expectation which is a human factor.

Q I think that we may have gotten off on a tangent here. My question was, why you used employment figures for the SMSA.

A As opposed to some other geographic area, is that what you are referring to?

Q That's right. Well, maybe I'd better ask you first whether or not the projections that you made as to the Spokane SMSA are generally applicable to the future increase in employment in the metropolitan Spokane area?

A The answer to that is yes, for the reasons we have discussed previously. The SMSA figures are the most reliable and comprehensive, the area is big enough to absorb future growth within its geographic boundaries. We think the SMSA accurately reflects the future growth potentials and opportunities, the SMSA regional figures in Spokane.

Q Is the percentage of population and employment and growth in the metropolitan Spokane area as compared to [245] the SMSA relevant to that?

A I am not sure I understand your question.

MR. HOFFMAN: Did the reporter get that?

THE REPORTER: Yes.

(Last question read by the reporter.)

THE COURT: That is hardly a question, that's a statement. Can you turn it into a question and answer it?

THE WITNESS: I think so. You are saying that the SMSA is the valid area, is that your question that you're asking me?

Q (By Mr. Hoffman) I previously asked you whether or not you could generalize from the SMSA figures as to future employment levels in the metropolitan Spokane and I believe you answered affirmatively?

A Yes, I can.

Q I then asked whether or not the proportion of people in employment in the county, that's in the metropolitan Spokane area, helped you make that draw that conclusion?

A I think—

Q The proportion of the people in metropolitan Spokane.

A I think that I understand what the question is now. Really the question is are there a significant number of people who do not live in the metropolitan area who live in the county, [246] subject to different economic forces which could create a problem, and the answer is no, that the majority of the people who live in the county, which is the SMSA, live within the urbanized area of Spokane. That is a valid—very valid unit be-

cause the city and the SMSA really work together as most of them do, and there is nothing unusual or unique to this SMSA or the employment population characteristics of it.

Q I would like to turn to the subject of population, and I direct your attention to Government's Exhibit marked for identification O-1 and O-2.

THE COURT: Haven't we gone over that, counsel?

MR. HOFFMAN: Only definitionally, your Honor. I don't think that we discussed the substance of it.

THE COURT: I thought we had, but perhaps I am in error. Of course, I am way down to O-23, and that's an analysis of the population and growth in the Inland Empire, Yakima, Walla Walla which, of course—

MR. HOFFMAN: If your Honor will recall, that is one of the exhibits we have withdrawn.

THE COURT: That's right, but I did read it anyway.

It is 3:00 o'clock, maybe we can take a brief break now, or a seventh inning stretch, and come back in in about 10 minutes.

[247] (Court reconvened at 3:20 o'clock p.m.)

MR. HOFFMAN: All right, I believe that we were on the subject of population and I would like again to direct your attention to Plaintiff's Exhibit No.—excuse me, Government's Exhibit for identification Nos. O-1 and O-2, did you prepare these exhibits?

THE WITNESS: Yes, I did.

Q Would you explain what they show?

A Exhibit O-1 shows the growth of population over the 1950 and 1970 time frame for the four areas we discussed previously in the Spokane SMSA, the basis used in evaluation, the metropolitan area, the rural area outside the city limits and—

Q You mean the urbanized area?

A The urbanized area, yes, excuse me. We see an annual change on a numerical basis on the bottom of the page. We put in percentage change as a secondary means of identifying change—

Q Would you look at that again. On that point, I thought the percentages meant something else.

A Well, the percentages are relating the numbers to the numbers above and they go into another area. That is what is meant to say here. They're not percentage increases, they are percentage changes. That is probably the word that is right. For example, it is [248] not valid to use the Spokane urbanized area as opposed to the SMSA because in 1950 to 1960, that time frame, the urbanized area's percentage of the SMSA was 90 percent. But in 1960 to 1970, in that time frame, it was only 30 percent and the reason for that is that much of the change, which in this case was growth, occurred in other areas outside of the urbanized area, but within the SMSA, the urbanized area defined in 1950.

Q By the census?

A Right. So the SMSA is the only really valid unit of measurement in looking for growth levels and the numbers shown on Exhibit No. O-1 are translated into the graph shown as Exhibit No. O-2 which illustrate I think the rate of growth for each of the areas, the general magnitude of growth.

Q How do the trends noted in the exhibit compare with the trends in employment that you testified to earlier?

A They generally corroborate them and here is the growth in jobs and here is the rate of growth in employment and you can see—

Q Do you mean in population?

A Excuse me, in 1950 to 1955 the high rate of growth in the county and that's of course the period of expansion in jobs. And then things slowed down in [249] emploment in the later part of the 1950's and then in the early 1960's slowed down in population.

Q Now would you turn to Plaintiff's Exhibit No., excuse me, again, Government's Exhibit marked for identification as O-8 and O-9. Did you prepare these exhibits?

A Yes, I did.

Q Would you explain what Exhibit O-8 shows?

A Exhibit O-8 shows five alternative sets of population projections keyed to five sets of conditions that we

found in existence over the 1950 and 1972 time frame and we projected on the basis of each of these sets of conditions to take a look at the projections as a basis for selecting the projection that we will use for planning purposes. Our recommended projections one through three are based on employment which is, as I said earlier, in our judgment most meaningful indicator of the increase in population and job opportunities and in essence, we have projected, one based on a high projection of employment, that is, the rate of employment that is occurring over the 1967 to 1972 time frame.

Projection number two is based on the rate of employment projection that was the rate of employment that occurred from 1962 to 1972, within that time frame, and projection number three is based on the rate of [250] employment growth that is occurring over 1950 to 1972 time frame and to each of these we apply the population relationship to job relationship, using the 1970 census as our base, in other words, in 1970 there are 104,600 jobs, 287,487 people which gives us 36.4 percent employment to population ratio, which is in line with other areas we worked on and we use that to project the population based on employment.

The projections number four and number five are projections of population based upon past trends and we use the actual—well, we checked our employment and our employment growth as it related to the past trends and how would that compare with it if we did that; how would you compare that with employment or the employment trend. We don't think this is as valid and we feel that projection. Number three—we would recommend it as a planning projection to be used subsequently in projection number three is based on low employment, a low employment projection which is employment growth over the 1950 to 1972 growth period.

Q Is your projection number three as shown in Plaintiff's Exhibit, excuse me, Government's Exhibit marked for identification O-10, is that there?

[251] A Yes.

Q Very briefly, and I don't want to keep repeating this, but I would like to have you mention it for the

record, you used the SMSA for this calculation, and you used the period 1972 to 1985 for the same reasons that you did in your employment projections?

A Yes, as you can see on Exhibit O-10 we have population shown for 1950 through 1972, that is using the census and then we continue the trend over 1972 to 1985 time-range, combine it on one time table so you can look at the rates of growth, and see the consistency over a 35-year time frame. The population levels grow at approximately 3600 people per year, so that by 1985 there about 385,900 people. The rate of growth at our projection level is lower than the past trends which have occurred over the 1950 to 1972 time frame, and although the line is straight over the 1972 to 1985 time frame, we anticipate that by 1985, if you look at the graph you will probably see slight curves, this is an average annual basis, but that is our projection that we in our judgment feel is a valid and conservative means of estimating future population growth for Spokane and the metropolitan statistical area.

Q I now would like to direct your attention to Government's Exhibit for identification marked O-11 entitled [252] Construction Activity, Housing Units Authorized, Spokane SMSA. Did you prepare this exhibit?

A Yes.

Q Would you explain the significance of its contents?

A Well, the Construction Activity is a secondary indicator, as are most other economic activities of vitality. We think it is fairly significant to look at the number of housing units authorized within the Spokane SMSA over the 1962 to 1972 time frame, and although we have data only through August, we see the rate of growth, both of what's good and what is bad, what is strong and what is weak, and as you can see, the rate of development has increased dramatically in recent years, and in 1971 there are 4,000 units, and in 1972 only through August there were over 3,000 units. There are many reasons for this, the availability of money, mortgage lending, and so forth, that I think one of the primary reasons for the development of residential units is demand, that the units couldn't be built unless people were there to either rent

them or purchase them, so this indicates I think a vitality, a confidence in the future, people are making commitments on a long term basis, new residential units typically last at a 30-year or more life, so I think this is an expression of confidence in the future.

[253] Q Would you state your conclusion as to the growth prospects of the Spokane metropolitan area?

A I think in conclusion the economy has experienced ups and downs, it went through a very difficult time in the period of the 1950s, during the recession, that was also I think accompanied in the early 1960s by somewhat of a philosophical attitude of concern. There are two elements of growth, one is the hard data, the projections we make, and the second is the vitality and the mental attitude of the people. Taking the first level, in terms of economic data, the trends are positive. It is going to be a steady growth even if another major recession occurs, which we don't see or have any indication that it will, that there will still be steady growth over the projection time frame of 1972 to 1985. I think as important, but non-quantifiable, is an attitude, a positive attitude of growth and dynamics as evidenced by the Spokane World's Fair, the amount of construction that is going on downtown; one individual quoted to me when I was in Spokane last week that on a per capita basis Spokane has the highest per cent of investment of any downtown in the country, in terms of the number of people. So things look very, very good. On a psychological basis, and again that is not quantifiable, [254] but I think our overall conclusion is that there is vitality and there will be growth in the future.

Q Are you familiar with the various urban areas in the State of Washington?

A In general, yes.

Q Based on your knowledge of these urban areas, how would you compare Spokane and characterize its importance in relation to these other urban areas?

A Well, I would say that clearly Seattle is the dominant area, definitely on the Coast, we have a region that includes Seattle, Everett, and Tacoma, an economic reason that is a dominant region in the Northwest, and

Seattle is No. 1, and interestingly Spokane is No. 2, like Avis, you might say, but it is a strong No. 2. The distance from Seattle is such that it is independent; it doesn't have the vitality of the Seattle economic region, but it is a healthy region and an important region.

Q Which region are you referring to?

A I am referring to Spokane. I think it is healthy and important, and having a geographic distance so that it has a large base of support, as I recall it is a short 300 miles from Seattle, and I would say it is the No. 2 city, the statistics as far as population show that, and if you combine into one region Seattle, Tacoma and Everett, [255] which I think is valid to do, just as we do in the Bay area, where we combine nine counties in the San Francisco Bay area, this is the No. 2 economic region in the state.

Q Would you describe Spokane's relationship with any other areas, geographic areas?

THE COURT: Are you talking about Western Montana, and Coeur d'Alene, Southern British Columbia, that sort of thing? Is that what you are going to talk about?

THE WITNESS: Yes.

THE COURT: All right, go ahead.

A As I say, I first became aware of Spokane's economic influence in what is called the Inland Empire when I was working for the State of Idaho on this impact study which we discussed earlier, U. S. Highway 95. Basically, there is a combination of population levels of different cities, so that Spokane is clearly so much bigger than any other city in the vicinity that it has dominated in the past, and in my judgment will continue to dominate the large region known as the Inland Empire, which basically includes Western Washington—

THE COURT: You mean Eastern Washington?

A (Continuing) I'm sorry, I mean Eastern Washington, Western Montana, and Northern Idaho, and you can put in [256] or leave out parts of Oregon, but I think there is no question that given the size of Spokane compared with Lewiston, Clarkston and Coeur d'Alene

and other cities within the Inland Empire, Spokane is the dominant force in terms of trade and commerce.

[257] Q Have you had an opportunity to read Government's Exhibit offered for identification L-1, which is the economic brief submitted by the National Bank of Commerce and Washington Trust Bank in support of their application for permission to merge?

A Yes.

Q Would you care to comment on the contents of that brief?

A I think in general I am in agreement with many of the statements of economics contained therein. For example, on page two is a statement that there is a natural division of the state into two principal and distinct regions, the high Cascade Mountains form a substantial barrier between the western third of the state and the remaining area to the east.

THE COURT: I wouldn't agree with that entirely, I just don't think that Yakima is closer to Spokane so far as commercial enterprises is concerned than it is to Seattle. Do you think that Spokane draws from Yakima like Seattle?

THE WITNESS: I was one of the economists, my partner and I, in the downtown revitalization of Yakima, and we did that, that was in '65, '66, that's seven or eight years ago, I would have to refresh my memory, but as I recall, there was a fair amount of [258] the retail sector at least commuting from Yakima to Seattle, people would drive into Seattle to purchase items.

THE COURT: It's much more difficult to get to Spokane, it's further too, miles-wise, and it's east of the Cascades. So when you talk about the Inland Empire, aren't you talking about from, say Ritzville east rather than from Ellensburg, for example, and Ellensburg is east of the Cascades but you wouldn't include Ellensburg in the Spokane area.

THE WITNESS: I think probably the commercial ties are closer to Seattle. The Inland Empire typically, when we do a trade area study, we get percentages of penetration, and it would decrease—that would be a peripheral area of some influence, but it is perhaps pe-

ripheral in that area. There is a newspaper survey or an audit, I think that you're looking at something like five percent or less penetration in terms of newspaper circulation, that was one indicator.

Q (By Mr. Hoffman) I would like to get to that in one moment. But very briefly, is there anything else that you would just like to highlight from that brief that is of particular interest?

A I think that the reference in general to the Inland [259] Empire, I think there are different definitions of it, and I would tend to use a more conservative one. The brief refers to "the economic influence of the City of Spokane reaches far beyond the borders of Spokane County. The city has developed as the center of a regional trade territory popularly known as the Inland Empire, which encompasses portions of four states and bounded by major mountain ranges.

"The Inland Empire extends from the Canadian border down to the Blue Mountains in northern Oregon and from the eastern slopes of the Cascades in Washington to the western slopes of the Rockies in Montana. Thirty-six counties are included in this area containing 1,156,-000 people."

The brief does go on to say that for the purpose of this brief, the Spokane trade area is more narrowly defined to include a region of only 27 counties in three states with a total population of 819,955.

I think probably in terms of significance, your Honor, I agree with the narrower definition but recognize there is some influence in the larger areas in other words, some influence in 36 counties, more influence in 27, and I think that the last point that I feel is important is that Spokane will continue to dominate this vast area, and as the brief says, the [260] importance of the City of Spokane, a vast area can be made clear from many types of evidence, metropolitan newspaper circulation is dominated by the Spokane dailies and then other points are made about the dominance of Spokane that I think I am in agreement with and confer with it.

Q I would like now to turn to Government's Exhibit

marked for identification 19 and 20, 0-19 and 0-20. Were these exhibits prepared by you?

A These exhibits are—I want to make sure they are the same exhibits.

Q The table entitled "Actual Growth, Sunday distribution, Spokesman Review Newspaper, 1972," that's 0-19, and 0-20 is a map of the Inland Empire showing percentage of households which receive a Sunday newspaper.

A Yes, these exhibits were prepared by us from data prepared, as illustrated and as noted in the source, from the ABC audit report to the audit bureau of circulation, Chicago, Illinois, the Spokesman Review.

THE COURT: What we are talking about just a minute ago is pretty dramatically illustrated, two percent in Kittitas, that's Ellensburg, and one percent in Yakima.

THE WITNESS: I think that peripherally is maybe being a little optimistic. There is, I think— [261] you are right, that really Yakima is not meaningfully related to Spokane on the basis of newspaper circulation.

THE COURT: All right.

Q (By Mr. Hoffman) Would you very briefly explain—you touched on it lightly before—but would you explain very briefly the significance of the exhibit.

A I think the exhibit is a good indicator of the penetration of the Spokane newspaper in the Inland Empire, which is also a reflection of the penetration of Spokane in many other lines, such as retail trade, commerce, wholesale trade, distribution, and as you see from our map, that this area had been classified into three categories of primary area, which includes the counties adjacent to Spokane, and that is based on percent distribution.

You will note in this area the percentages all exceed 50 percent, in other words, the newspaper is distributed to over 50 percent of the households located in those counties, and then we have a secondary area, and in the secondary area, the percentages of penetration range from 23 percent to 46 percent. I think that is very meaningful penetration. And then in the tertiary areas, the percentages range from a low of one percent, which is Yakima, which is really [262] not meaningful, to a high

of 15 percent in Douglas County, which is a substantial, and I think this exhibit illustrates the Inland Empire graphically and the penetration varies by county.

MR. HOFFMAN: Your Honor, at this time the government moves that its exhibits marked for identification O-1 through O-9 inclusive, O-11, O-19 and O-20 be admitted into evidence as well as Exhibit L-1 and L-2.

THE COURT: Any objection to that?

MR. JOHNSTON: Well, L-1 and L-2, I don't believe we have heard anything about that.

MR. HOFFMAN: Well, Mr. Marston just testified to L-1, that's the economic brief, and L-2 is the appendex to L-1.

MR. JOHNSTON: That is in the record, that was put in by Mr. Hartman at the beginning of the case.

THE COURT: You don't have to introduce it, that is here is what he says. Is that right, Mr. Hartman?

MR. HARTMAN: That is in the application.

THE COURT: All right. In other words, it is a part of the record, so—

MR. HOFFMAN: In any case, we would like to use it as evidence in the case.

[263] THE COURT: All right, we will admit it in evidence as well, being part of the record.

MR. TORRE: Just for clarification, I understood Mr. Hartman introduced only the transcript. Did he introduce the entire record?

MR. HARTMAN: That is the transcript and the exhibits to the hearing.

MR. HOFFMAN: But not the application, it's not the application?

MR. MOEN: The application is going to be offered tomorrow.

THE COURT: It is in now, we won't have to—we will admit it. Go ahead.

(Government's Exhibits O-1 through O-9, O-11, O-19, O-20, L-1 and L-2 for identification be admitted into evidence.)

[264] MR. JOHNSTON: If the Court please, I might say that in this group of exhibits that this witness has gone through we didn't have a chance to segregate these

due to the numbering system which has just been devised, and the comments we had as to the relative accuracy do not relate to these basic statistics in this old group.

THE COURT: Okay. All right, is there anything furthere from Mr. Marston?

MR. MOEN: With the Court's permission I would like to defer any cross-examination until Mr. Hartman has a chance for cross-examination.

MR. HARTMAN: I just have a couple of questions, your Honor.

CROSS-EXAMINATION

BY MR. HARTMAN:

THE COURT: As I understand it, Mr. Hartman, all of his testimony goes to the projected growth of Spokane County and the areas that are included in this SMSA, I guess you called it, and that is all I get from it, just the projected growth?

MR. HARTMAN: Yes, your Honor.

THE COURT: And the reasons why he thinks it will grow as far as jobs and housing and the normal [265] growth that he ascertained from previous census, et cetera, and how he draws his conclusions and that's about all it is, isn't that it?

MR. HARTMAN: Yes, that's about it.

THE COURT: I don't mean to say that's about all it is, I should say that's what he testified to.

MR. HARTMAN: That's it.

THE COURT: I don't want to depreciate his testimony, which I am not. All right, go ahead.

Q (By Mr. Hartman) Now, Mr. Marston, do you have any expertise in the field of banking?

A No

Q In making these studies and projections did you take any banking factors into consideration?

A No.

Q When you were hired by the plaintiff here, did they indicate that this matter involved banking?

A Yes.

Q You were aware when you made these studies you were aware of that?

A Yes.

Q Did you look at any of the factors which would enable someone to reach a conclusion as regards to banking or banking economics?

[266] A No.

Q Did you testify as a witness for the plaintiff in the United States vs. Idaho?

A Yes, I did.

Q In the Idaho case?

A Yes.

Q Would you tell us what kind of testimony you gave in that case and what it related to?

A I think the testimony related basically about to the same factors, was the area—

THE COURT: How fast Twin Falls was growing, is that it?

THE WITNESS: Was it growing, your Honor, I think was it.

THE COURT: I just got through reading that case just during the recess.

MR. HARTMAN: Very good, your Honor.

Q Now, would you say it is a fair statement, Mr. Marston, that in spite of your conclusions and testimony in this case the Court found that there were no economic or financial or business conditions in Twin Falls to justify the state or federal regulators to authorize another bank in Twin Falls?

THE COURT: Well, just a minute, Counsel, that's a tough question because I don't know if he [267] read the opinion or not.

I did, I read it, and the Court found that the rate of growth of Twin Falls was slow and that is the way I recall the opinion and that's the way I understood he testified. Is that about it?

THE WITNESS: Yes, your Honor, that was it.

THE COURT: That's what the Court found.

MR. HARTMAN: Well, I guess that's all I have then.

THE COURT: Well, I mean insofar as his testimony is concerned.

MR. HARTMAN: That's correct, your Honor.

THE COURT: And the Court found that the rate of growth was slow, there was nothing dramatic about it.

MR. HARTMAN: I think that makes my point, your Honor.

THE COURT: You testified that the rate was slow?

THE WITNESS: Yes.

THE COURT: And the Court found that there wasn't any reason to allow a fifth bank to come into the area because of the slow rate of growth and in the foreseeable future there never would be a fifth bank.

[268] MR. HARTMAN: Well, that probably supports Mr. Marston's testimony and—

THE COURT: Oh, I don't know if I would put it quite that way, I don't think that he was responsible for the Court finding that a fifth bank would have come, maybe he was responsible for that, maybe his testimony was that the rate of growth was so slow that the Court said, "Well, under those circumstances you could never have or wouldn't have another bank." Do you see what I am getting at?

MR. HARTMAN: Yes, I do, your Honor.

THE COURT: I don't want to put the blame on him for the Court finding anything in that because I don't think that that would be appropriate, from the way I read it I don't know what his testimony was.

The Court in there did in that opinion remark about that it didn't credit certain of the experts and Mr. Marston wasn't one of them. True?

MR. HARTMAN: That's correct, your Honor.

THE COURT: He didn't mention Marston, he did mention a certain expert that he called but not Marston.

MR. HARTMAN: What did you say as to the rate of Twin Falls growth in that case?

THE WITNESS: Well, I would have to review [269] and refer to my notes in terms of specifics or something that I haven't with me.

Q (By Mr. Hartman) You don't remember?

MR. HOFFMAN: I would have to object to that, your Honor, as to the resolution of another fact case to the growth of Twin Falls.

THE COURT: Well, I would conclude that the Court found that the rate of growth was slow unless he is willing to say he testified it was going to be fast, I don't

think it would be material and I am sure he didn't testify to that. Did you?

THE WITNESS: Not to my knowledge.

THE COURT: Okay. Anything further?

MR. MOEN: No cross-examination.

THE COURT: Now, this witness can be excused then, is that correct?

MR. HARTMAN: Yes, your Honor.

THE COURT: All right, he will be excused. And now as far as other witnesses are concerned, is Mr. MacMurray coming Thursday?

MR. TORRE: Tomorrow we will read the deposition of the late W. Witherspoon in the record.

THE COURT: How are you fixed for witnesses, Mr. Moen?

MR. MOEN: Well, I would hate to start off with one [270] this afternoon, your Honor.

THE COURT: No, no, I mean tomorrow.

MR. MOEN: I think I could have a witness in the morning, your Honor, we can get started in the morning.

THE COURT: All right. Do you think Mr. MacMurray will take a full day?

MR. TORRE: It's hard to say right at this moment, but not a full day.

THE COURT: I would think so. He's in Alaska and he is the former head of the—

MR. TORRE: (Interposing) Supervisor of Banking in the State of Washington and now is in the same position in the State of Alaska.

THE COURT: I know him personally and I just didn't think that he would take a full day, and the reason I don't think he would take a full day is he is a lawyer, so he could take two days, but you mean his testimony won't take all day long?

MR. TORRE: Well, there is a transportation problem between here and Alaska, two problems, in fact, and also his position up there requires him to be there.

THE COURT: You can have him here Thursday.

Now, Mr. Moen?

[271] Mr. Moen, in view of the fact that this is a court trial you have no objection, do you, to going ahead and putting on some testimony?

MR. MOEN: Not at all, your Honor.

THE COURT: And you can make whatever motions when you rest, in any event take it, as you probably will, but you don't have any objection?

MR. MOEN: No, not at all, your Honor.

THE COURT: So I think—well, how long will Mr. Witherspoon's deposition take? It's not too thick, is it?

MR. TORRE: No, your Honor, it's quite thin.

THE COURT: All right. You will have some witnesses so we can just go all day tomorrow, Mr. Moen, and that will expedite the ultimate disposition of the case. And do you want me to read Mr. Witherspoon's deposition before tomorrow?

MR. TORRE: Whatever you prefer, your Honor.

THE COURT: You can put it in the record by question and answer but if I read it, then I'll remember it better than if I hear it the first time.

MR. TORRE: Well, if the defendant and the intervenor have no objection, we have no objection to that.

THE COURT: Then I will read it in the [272] interim and of course every time a deposition is filed, why they, that, under the Court rules, that permits me to read it. All right, now, there is nothing further then tonight?

MR. MOEN: Nothing as far as the defendants are concerned, or the intervenors are concerned, your Honor.

THE COURT: All right.

MR. TORRE: Nothing further as far as we are concerned, your Honor.

THE COURT: While we are all here, were you in that case, that Idaho case?

MR. TORRE: Yes, I was, your Honor.

THE COURT: I haven't heard, of course, the testimony of the defendants' side, but this case seems to me to be remarkably similar to the Idaho case save and except for the fact that Spokane, the City of Spokane, is more of a metropolitan area, is that the distinction?

MR. TORRE: Well, it is larger, and in the Idaho case there was another kicker in it, in that, was that the government alleged there was an elimination of existing competition in an eight-county area. This was narrowed down in trial to the Jonston area.

THE COURT: I read that, yes, but other than [273] that factor the distinction I see is the Spokane metropolitan area as contrasted to the City of Twin Falls, a 25,000 population city, is that it?

MR. TORRE: There is quite a difference of magnitude in the market areas and in importance in the state.

THE COURT: All right, then. If there is nothing further we will recess until tomorrow morning at 9:30. Is that satisfactory or do you want to start earlier?

MR. MOEN: No, 9:30 sounds good to me, your Honor. 9:30 is just fine.

MR. TORRE: That is just fine, your Honor.

THE COURT: Very well, we'll recess until 9:30 in the morning.

(Court recessed until 9:30 A.M., January 10, 1972.)

[274] REPORTERS' CERTIFICATE

WE, W. L. Mayrand, Gerald J. Popelka, and Paul C. Tveten, official court reporters for the United States District Court, for the Western District of Washington, do hereby certify that the annexed and foregoing is a full, true and correct transcript of proceedings had in the above-entitled and numbered cause, on the date herein before set forth, and we do further certify that the same has been prepared by us, or under our direction.

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[275] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

[Filed in the United States District Court,
Western District of Washington, June 22, 1973,
Edgar Scofield, Clerk, by M., Deputy]

No. 237—71C2

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE, ET AL, DEFENDANTS

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and numbered cause in the above-entitled Court before the Honorable WILLIAM N. GOODWIN, United States District Judge, on Wednesday, January 10, 1973, at the United States Courthouse, Tacoma, Washington.

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VOLUME III

[276] APPEARANCES

RICHARD J. TORRE,
ALLAN S. HOFFMAN,
PHILIP L. VERVEER, and
RONALD SILVERMAN, Attorneys, Antitrust Division, Department of Justice, appearing for and on behalf of Plaintiff;
JAMES WILLIAM JOHNSTON and
R. A. MOEN (of Graham, McCord, Dunn, Moen, Johnston & Rosenquist), and
DANIEL M. GRIBBON, and
CHARLES LISTER, (of Covington & Burling), appearing for and on behalf of Defendants;
JON HARTMAN and
THOMAS McLACHLEN, appearing for and on behalf of Intervenor.

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[277] PROCEEDINGS

(The Court convened at 9:50; everybody is present.)

MR. VERVEER: Your Honor, the government at this time would like to read into the record the deposition of the late W. W. Witherspoon.

THE COURT: All right.

MR. VERVEER: The deposition was taken September 8, 1972, in Spokane.

THE COURT: Is there any objection to this?

MR. MOEN: Not at this time. I intend to object to certain questions when we get into it.

THE COURT: All right. I was going to say if there wasn't any objection, we could shortcut this. I have read the deposition, and I gather that the purpose of the government introducing it into evidence is to show that banks can acquire other banks under sponsorship, and in the last part of the deposition, that Mr. Witherspoon said he wouldn't try to move into Seattle and Tacoma under the same circumstances as he would if he were going to go into Othello or something of that sort. Is that the idea?

MR. MOEN: Our position is to the extent that the procedure used and described by Mr. Witherspoon [278] in his depsition is concerned, as to the extent that it is illegal, it is not binding on the National Bank of Commerce in any way, and if there is a violation of the statute, why, it doesn't provide a means of entry for Commerce.

THE COURT: Go ahead, put it in then.

MR. VERVEER: Your Honor, we don't have any great desire to read this into the record. We would like to have it in the record at this point if that is acceptable.

THE COURT: I am going to let it go in for whatever it is worth.

MR. MOEN: If our objection can be noted in the record at this time, I see no reason to read the whole deposition.

THE COURT: I don't think so either because I have read it, and as you can see, I didn't detail it paragraph

by paragraph, but that is the import of it. Isn't that it, what I have just said?

MR. MOEN: That's right, as long as we preserve our position, there is no reason to read it.

THE COURT: All right, go ahead. You offer it and I will admit it into evidence.

MR. VERVEER: At this time we would like to offer Mr. Witherspoon's deposition.

[279] THE COURT: I noticed, of course, you cross-examined him at the time.

MR. MOEN: That's correct, your Honor. We just didn't note our objections at that time, but they were to be preserved until trial, but as long as it is understood that we have the objections—

THE COURT: You have your objections. The point of your objection is that if the Old National engaged in a practice that was in violation of the law, that doesn't mean necessarily that N B of C would engage in a similar activity, is that the point?

MR. MOEN: That's correct, your Honor, and to the extent that whatever way they may construe the statute, it has no—

THE COURT: No binding effect on you.

MR. MOEN: No binding effect on the National Bank of Commerce.

THE COURT: All right.

(The deposition of W. W. Witherspoon was read as follows:)

[280] "W. W. WITHERSPOON,

called as a witness on behalf of Plaintiff, being first duly sworn, was examined and testified as follows:

EXAMINATION

"BY MR. VERVEER:

Q Would you please state your name and address for the record?

A W. W. Witherspoon, 1821 Upper Terrace Road, Spokane, Washington.

Q What is your profession, Mr. Witherspoon?
A I am an attorney and also a banker.
Q With whom are you a banker?
A I am chairman of the board of Washington Bancshares, Inc. and chairman of the board of the Old National Bank of Washington.
Q And what is Washington Bancshares, Incorporated?
A It is a registered bank holding company.
Q What banks does it control?
A The Old National Bank of Washington and First National Bank in Spokane.
Q Mr. Witherspoon, how has your health been recently?
A It has been poor.
Q Are you under a doctor's care?
A I am.
Q Would it be difficult for you to travel to Tacoma, [281] "Washington for a trial in October?
A It could be difficult for me to do so.
Q Do you expect to be hospitalized in the near future?
A I will be entering the hospital this coming Sunday.
Q Has a physician advised you to attempt to get away from the Pacific Northwest area for a vacation?
A No.
Q Has the Old National Bank ever sponsored or assisted in the creation of new banks?
A It has assisted in the creation of new banks.
Q What banks were they?
A Walla Walla National Bank, Bank of Richland, Tri-Cities National Bank, Pasco, a national bank at Othello, I can't give you the correct name at the moment, and National Bank of Kennewick, Washington.
Q To the best of your recollection would the bank in Othello have been named the Othello National Bank?
A Yes, I believe that is correct.
Q And the bank in Kennewick named the Kennewick National Bank?
A I think that is correct.
Q Could you describe what type of assistance was given to the new banks?
A Well, it varied from bank to bank.

Q Could I ask you with respect to the Walla Walla [282] "National Bank what type of assistance was rendered?

A In the case of the Walla Walla National Bank the people who were forming it were not able to raise sufficient capital funds, and I assisted in that manner by obtaining a couple of Spokane people who did make substantial investments.

Q Was there any further assistance beyond that in the case of the Walla Walla National Bank?

A Very little other than what any bank would render to a correspondent bank. I might say that we would like to have assisted in cases where we were not permitted to.

Q In the case of the Walla Walla National Bank?

A That is correct.

Q What assistance was rendered to the Tri-Cities National Bank in Pasco, Washington?

A We assisted in their obtaining a manager. We assisted in the formation of that bank in that we encouraged people to start a bank in that case.

Q And representatives of the Old National Bank actually actively sought out individuals and encouraged them to do it?

A That is correct.

Q Did any officers of the Old National Bank own stock in the Tri-Cities National Bank in Pasco?

A Mr. DeWitt Wallace owned stock in the Tri-Cities [283] "National Bank. He was president of the Old National Bank at that time.

Q Do you recall the approximate percentage of stock in the Tri-Cities National Bank which Mr. Wallace owned?

A I do not.

Q What assistance was rendered to the Othello National Bank?

A In the case of the Othello National Bank, there were people in the community who desired to form a bank, came to a manager of our Tri-Cities' branch, and asked for assistance.

Q What assistance was then rendered to them?

A Rendered? Mr. Wallace discussed the matter with Mr. Saxon who was then comptroller of the currency, an

application having previously been filed by this group. Mr. Saxon took the position that a charter would be granted provided that they could demonstrate a need for another bank in the community and that adequate financing and good management would be provided. With this the Old National continued to help them in the formation of their bank. I believe again that Mr. Wallace made a stock investment. We did assist some of these stockholders by loaning them money with which to buy stock and taking stock as security, perhaps with other security than stock. [284] "Q What assistance was rendered in the case of the Kennewick National Bank?

A In the case of the Kennewick National Bank again the people who were interested in forming the bank came to Mr. Wallace, and as for assistance, the matter of whether or not a charter would be available was discussed with Mr. Saxon on the very same trip that the Othello one was discussed. In that particular case there was a difficulty in obtaining proper management. We had attempted to line up management for them from outside sources, had not been successful when it came time to move ahead. So we gave a leave of absence to a man who had been a manager of our Pomeroy, Washington branch, and he managed the Kennewick bank.

Q Could I ask you to repeat? You said you gave a leave of absence to the man at the Pomeroy branch?

A That is correct.

Q What assistance was rendered in the case of the bank of Richland?

A At the start there were two groups that were out to form banks in Richland, and we heard about it. We were able to get the two groups together. One of the groups had already filed an application for a state charter. We were able to get the two groups together and proceeded with the formation of a bank. And again [285] "I believe Mr. Wallace made a stock investment in that one. I am not entirely sure of that. Again I do know that we did loan money to some of the original shareholders.

Q Would it be a correct summary to state that in the case of the Tri-Cities National Bank the Old National Bank approached individuals to serve as organizers and in

the other four cases, the prospective organizers approached the Old National Bank?

MR. HARTMAN: I will object to the form of that question.

Q (By Mr. Verveer) Mr. Witherspoon, could I ask you to recapitulate who approached whom in the case of the five banks that we have discussed?

A The Walla Walla bank, we were approached by an attorney from Walla Walla who wanted to get a bank started. In the Tri-Cities National Bank at Pasco we went to individuals in that area to interest them in forming a bank. In the case of Richland, we obtained information that two groups were each trying to get bank charters. A member of one of the groups was a director of the Tri-Cities National Bank, and we got the information from that source. We made the move then to try to get the groups together and to form a bank which would be a correspondent of the Old National. In the case of [286] "Othello, the group who were attempting to form a bank and who had made an application for a national charter approached our manager—manager of our Tri-Cities' branch. In the case of Kennewick, the group who were forming a bank approached us.

Q Mr. Witherspoon, why did the Old National Bank assist in the formation of these five banks?

A We assisted in the formation of these banks, first of all, to have a correspondent and with the hope and belief that we would be able to acquire them in the future and make branches of the Old National there.

Q Has the Old National Bank in fact been able to acquire these five banks?

A It has.

Q Are the branch offices which these banking offices now have become profitable branches?

A That is a rather difficult question in that it is most difficult to determine the net profit of individual offices in our branch system. I would say that in some cases we have recovered the premium that was paid and are in the black in that respect, and that in other cases we have not as yet fully recovered the premium paid.

Q Was there an understanding between Old National

Bank and the organizers of these new banks that Old National [287] "Bank would eventually acquire them at the time that the charters were granted?

A There was an understanding between the Old National Bank and some of the original shareholders of those banks that the Old National would acquire them.

Q In the cases where there was such an understanding did these shareholders control the requisite percentage of stock to assure control to Old National?

A Yes, they did.

Q Was the understanding between Old National Bank and these shareholders formal or informal in nature?

A To the best of my recollection there was no written understanding with respect to the Walla Walla National Bank, but there was a formal understanding with each of the others.

Q Mr. Witherspoon, what did the formal understanding in the case of the other four banks entail?

A It was an agreement in each case which provided that within five years from the formation of the bank the Old National Bank would make application to the comptroller for permission to acquire that bank and establish a branch at its location, that the shareholders who joined in that agreement would vote in favor of such a transaction, that the price which would be paid would be either a net—the fair value of the assets [288] "less liabilities at the time of takeover plus a premium equal to four percent on deposits, or the shareholders' original investment plus interest at eight percent per annum compounded annually, whichever was the greater.

Q Was the comptroller of the currency informed by the Old National Bank of its activities with respect to the assistance to the new banks?

A Not in the case of the Walla Walla National Bank. The comptroller was informed in every other case, however.

Q Was he informed of the intention of the Old National Bank eventually to acquire the assisted banks?

A Yes, he was. I might state, just to clarify this, in the case of the bank of Richland, which was a state bank, the comptroller was not informed of it until after that

bank had been formed, but he then was informed of it. In all other cases he was informed of it before the organization of the bank.

Q Did the comptroller of the currency raise any objection to the Old National Bank's efforts to establish branches by this means?

A He did not. As a matter of fact, in the case of the Tri-Cities National Bank, the suggestion that we form the bank was made by the Chief Deputy Comptroller in [289] "the presence of—who was Lew Jennings at the time in the presence of Ray Gidney, which was the comptroller of the currency, and Mr. Gidney approved that we should do it.

Q In connection with these activities involving assistance and eventual acquisition by the Old National Bank, did the law firm of which you are a senior partner provide legal advice to Washington Bancshares and the Old National Bank?

A It did.

Q Did your firm advise Washington Bancshares or the Old National Bank that there was anything illegal or improper about this method of establishing branches under either state or federal law?

A It did not.

Q Did you, as the chairman of the board of Washington Bancshares, ever have any fear that the holding company would be in danger of forfeiting its charter under the state holding company law as a result of the agreements which you have told us about involving the controlling shareholders of the various banks?

A No, I did not.

Q Mr. Witherspoon, what is the percentage, approximate percentage, of stock ownership that Washington Bancshares has in its two banking subsidiaries?

[290] "A Oh, 98 percent of the stock of the Old National Bank and 99 percent of the stock of the First National Bank at this time.

Q And at the time that these activities which you have described were taking place, what was the ownership, approximately?

A Well, at that time I believe it was approximately

two-thirds of the Old National Bank and 74 percent of the First National Bank.

Q Is the Washington—

A It was less than two-thirds of the Old National Bank at that time, 60, 62 percent, something like that.

Q Is Washington Bancshares, Incorporated a Washington corporation?

A It is.

Q Where did the manager of the Tri-Cities National Bank come from?

A He was Mr. Wallace's son-in-law. He had been running a small bank at Endicott, Washington.

Q Mr. Witherspoon, to your knowledge was the Old National Bank the first bank in the State of Washington to assist other banks in the manner you have described?

A I have to answer that it is just general knowledge and it's done by other banks in the past, with my not having any proof at all.

[291] "Q Based on your beliefs and without any evidence of it, what other banks were engaged in activities similar to those which you have described?

MR. MOEN: I am going to object to it as repetitious. He's already answered the question. He said he didn't know, didn't have any particular knowledge of it.

MR. VERVEER: We will note the objection and ask Mr. Witherspoon to answer the question.

MR. MOEN: He's already answered the question.

Q (By Mr. Verveer) Mr. Witherspoon, I will attempt to restate the question. Based on simple belief and not on firsthand knowledge, what other banking organizations in the State of Washintgon have been involved in activities similar to those which you have described?

MR. MOEN: Same objection.

A Want me to answer?

Q Please.

A Seattle-First National Bank, National Bank of Commerce, Peoples National Bank.

Q Again based on your belief, could I ask what assisted banks were involved in the case of Seattle-First National Bank?

A A bank at Kennewick which subsequently was

branched, a north Spokane bank which subsequently was acquired [292] "and branched. I know no others.

Q Based on your belief, what assisted banks were involved with the National Bank of Commerce?

A The bank at Pomeroy, Washington.

Q And again based on your belief, what banks were assisted by Peoples National Bank?

A The bank of Vancouver.

MR. VERVEER: We have no further questions.

(A short recess was taken)

## EXAMINATION

### BY MR. JOHNSTON:

Q Mr. Witherspoon, as I recall it, counsel asked you a question that was worded roughly as follows: In your opinion was this method of establishing branches legal or was it proper. Now, I am not quite clear as to what counsel meant by this method. What did you understand him to mean?

A I understood him to ask me whether I had had any concern as an officer of Washington Bancshares as to the possibility of our charter being put in danger by using this method of getting banks started, and future acquisition.

Q In other words then, you didn't understand him to mean that what you did was a method of establishing a branch from the inception?

[293] "A No.

Q And is that what you did?

A No. We assisted in the formation of a bank which we hoped to be able to take over.

Q And circumstances later developed so that you did take them over?

A That is correct.

Q Now, counsel also asked you, Mr. Witherspoon, if you had informed the comptroller, and there again I wasn't quite clear as to what information he—you said that you had informed the comptroller, and I wasn't quite clear as to what you had informed the comptroller in that connection. Can you elaborate on that?

A Merely the fact that we were assisting in getting a bank started with the hope that we would be able to acquire it in the future.

Q In other words, you didn't inform the comptroller that this was simply a method of—this is just a procedure to acquire a branch?

A Not in that term, no.

Q Well, do you think that the information that you gave the comptroller would have been susceptible to that interpretation, that this was simply a device to acquire a branch for Old National Bank?

A Mr. Johnston, I don't know just quite how the comptroller [294] "would take it. I did explain that in the second transaction we had that this method was suggested by a chief deputy comptroller and approved by the comptroller, and in subsequent transactions we informed the comptroller that we were working on assisting in the formation of a bank which we hoped to be able to take over in the future. That is about all that was said to him.

Q I see. He understood that you had your eye on the thing—

A Right.

Q —at the very least?

A Yes.

Q Was the comptroller advised of these agreements that you say you had with the stockholders, do you know, do you remember?

A Not that I know of, no.

Q Mr. Witherspoon, we know, of course, that each one of these new banks involved here were in relatively small communities, at least as compared with metropolitan areas. Would you feel that the procedure that was followed by the Old National Bank would give much hope of ending up as a branch of a bank if the locale were a metropolitan area such as Spokane?

MR. TORRE: Is that your question?

[295] "MR. JOHNSTON: Yes.

MR. TORRE: Could you repeat the question before he answers?

(The previous question was read back by the court reporter.)

Q (By Mr. Johnston) Go ahead and answer.

A Well, it could be possible to establish a branch in that manner, I would think.

Q Well, Mr. Witherspoon, this wasn't exactly the question I intended. The feasibility of it—let's assume for the sake of the question it would be possible. What would be your judgment as to its feasibility?

MR. TORRE: Object to the form of the question as being vague. Could you rephrase it? Just as feasibility in what respect?

Q (By Mr. Johnston) Feasibility in all respects that a banker would make a judgment with respect to a procedure of this kind?

A I would answer that, Mr. Johnston, by saying that we wouldn't consider trying to use that method in getting into Tacoma or Seattle.

Q Now, Mr. Witherspoon, you have testified as to your impression as to the character of certain acquisitions that have been made by other banks in the state. Do you have any direct knowledge of the circumstances, I [296] "mean, the circumstances of those acquisitions other that, as you said, your general knowledge that you testified it was predominant?

A No, I do not.

Q You have never examined any files on these—

A I have not.

Q I see, so that your testimony in that respect is simply an understanding—a rumor is the wrong word, but maybe you could supply one that would be better?

A Well, just the feeling among the fraternity, the banking fraternity, that that is what has happened or what is happening.

Q I see. Now, Mr. Witherspoon, you have been in the banking business for a long time in the state, and I assume you are familiar in at least a general way with the track record of the National Bank of Commerce as a competitor in the various areas that it's entered in the State of Washington, are you not?

A I am, yes.

Q Would you give your impression of the National Bank's activities in that regard?

MR. TORRE: I will object on the ground that it's beyond the scope of direct. Go ahead and let him answer the question.

MR. JOHNSTON: Okay.

[297] "A Yes, we are in direct competition with National Bank of Commerce in several different communities. They are a very strong competitor, as strong as any bank in the state.

Q (By Mr. Johnston) Would you feel that on the basis of your knowledge of their track record it would be your view that they would be a strong competitor if they were to enter Spokane as a result of this merger?

A I am sure they would be a strong competitor.

MR. JOHNSTON: That is all the questions I have.

MR. HARTMAN: Intervenor has no questions.

MR. VERVEER: We have a couple of matters we would like to go into very briefly.

## EXAMINATION

### BY MR. VERVEER:

Q In the five communities, Mr. Witherspoon, in which you have described the assistance Old National Bank rendered to new banks, would Old National Bank have rendered that assistance if they could have established de novo branches in these communities?

A Well, that answer to that is no.

Q How did the Old National Bank get into the Seattle banking market?

A By acquisition of the Northwest Bank.

Q How large was the Northwest Bank at the time of that [298] "acquisition?

A Its deposits were around thirteen and a half million.

Q And how many offices did it have?

A Two.

Q About when was it chartered?

A It had been chartered roughly seven years before we took it over.

Q Was Northwest Bank a state bank?

A It was.

Q I believe in answer to a question that Mr. Johnston just asked you, you suggested that you would not go into Tacoma or Seattle by means of assisting with a bank formation and later attempting to acquire it?

A (Nods yes.)

Q Would your answer remain the same if there were no other means available to get into those banking markets?

A Yes, I believe it would.

MR. VERVEER: Okay, we have no further questions.

MR. MOEN: Nothing further."

(Deposition concluded.)

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MR. VERVEER: Your Honor, the government submits that Mr. Witherspoon's deposition raises the issue of the possibility of sponsorship of the bank. In that connection, the government would like to [299] offer documentary evidence which we have denominated Exhibit H. Your Honor, the government offers Exhibit H-1.

THE COURT: Let's see what Exhibit H is all about here. H-1.

MR. VERVEER: Your Honor, this is the decision of the Comptroller of the Currency on the application of Peoples National Bank to acquire the Bank of Vancouver National Association. It is dated—

MR. MOEN: The defendant will object to the entry of this exhibit on the grounds that it has nothing to do with the issues in this particular case.

THE COURT: Let's go into this and see what the purpose of it is. Is the purpose to show the Comptroller of the Currency would approve an application by N B of C to acquire a bank that is in existence in Spokane? Is that the point of it?

MR. VERVEER: Your Honor, the material in this exhibit is offered to show variously that the sponsorship of banks is an established practice in the State of Washington; that the regulatory authorities are aware of that practice, and for example, specifically to Exhibit H-1, that in this case Mr. William B. Camp, Comptroller of the

Currency, did not refrain from approving a merger of the bank which he stated was [300] sponsored by the applicant for the merger.

THE COURT: Assume for the sake of the argument that he would approve an application of the National Bank of Commerce to acquire a bank in Spokane, what bearing does that have on the question of whether or not this proposed merger is pro or anti-competitive?

MR. VERVEER: Your Honor—

THE COURT: That is the issue before me, and that, in my judgment, would have no bearing on whether or not this merger is pro or anti-competitive, the fact that he might approve an application if they wanted to—sought to acquire another bank. I don't see any—

MR. VERVEER: Your Honor, the government agrees that the issue before the Court is the instant merger and none other.

THE COURT: That's right.

MR. VERVEER: However, according to our theory, in order for there to be even potential competition, there must be alternative means of entry available to the National Bank of Commerce into the Spokane metropolitan area. We have introduced—

THE COURT: I am just saying, suppose there is, what does that have to do with whether or not this merger is pro or anti-competitive. If I would assume [301] for the sake of the argument here and the decision in this case that they could go over there and buy American Commercial, if they wanted to pay what your witness called a premium, and my understanding of a premium price means that you pay the highest and the best and maybe a little extra premium, you know what that word means, but suppose they could, what difference would that make so far as the issue here is concerned, which is whether or not this merger is pro or anti-competitive? That is the point I am making.

MR. VERVEER: Only this, your Honor, that in terms of our theory of potential competition, there must be some possibility that the National Bank of Commerce can get into the Spokane market by some means other than acquiring Washington Trust Bank.

THE COURT: I understand that your theory is that it would be better that they went in the other way.

MR. VERVEER: And the defendants, your Honor, deny that there is any other possibility available to them.

THE COURT: Even if they do deny it, my point is this proposed merger either anti-competitive or pro-competitive—or assuming that it is anti-competitive, then we go to the next step, whether or not does it serve a need in the community that outweighs any [302] anti-competitive effect that it may have, and that is the issue, and then we get into this. This is peripheral at best because—I will accept the proposition that they could get in over there for the purposes of decision in this case in some other way, but I still say that it makes no difference so far as I am concerned if they get an ultimate decision here whether or not this proposed merger is anti-competitive or pro-competitive if they could get in there another way because if they got in another way, you say they would be pro-competitive. But suppose that I should find that getting in this way is pro-competitive, what difference does it make? That is the point I am trying to make.

[303] MR. VERVEER: Yes, your Honor, it is our position that it would be impossible for the Court to find that this merger was anti-competitive under the theory of potential competition, unless they could get into Spokane by some other means.

THE COURT: Well, all right.

MR. VERVEER: Would you care to stipulate to that, Mr. Hartman?

MR. HARTMAN: Would you say that again?

THE COURT: All right, say it again.

MR. VERVEER: The Government's theory is that it would be impossible for the Court to decide that the instant merger is anti-competitive under our theory of potential competition, unless potential competition can become actual, that is, unless N B of C can get into Spokane by some means other than the instant merger.

MR. MOEN: The defendant will not stipulate to any theory of the Justice Department, because they change their theory every time they have another antitrust case.

THE COURT: Well, maybe we are making a whole

lot of nothing out of this, as far as this exhibit is concerned, in that the activities of the Comptroller's office with regard to other applications for acquisition may show or may not show that this bank [304] could acquire a bank over there, I don't know, but I take it that the Comptroller makes his decision in each individual case based on the facts of that case, that the probative value of this in any area isn't of any great moment. I just feel that I could even assume for the sake of your argument that they could get in there eventually some other way, either by starting their own bank, or acquiring another, but I just don't think that is going to be critical to the question that is before me, or questions. That is the way I feel about it. So for that reason I will just admit it over their objection and let it sit in the record for whatever it is worth. That will conclude this.

MR. VERVEER: All right, your Honor.

I would point out that we have fifteen documents which represent either decisions or advisory reports from federal regulatory agencies, and each and every one in some way makes reference to the practice of sponsorship of small banks by larger banks, and in each case there was ultimate acquisition.

THE COURT: This will be off the record.

(Discussion off the record.)

MR. VERVEER: Your Honor, Mr. Moen just raised a question of what we mean by sponsorship.

THE COURT: Well, I understand, and I don't [305] want to go into that.

MR. VERVEER: Your Honor, the government now would like to offer documentary Exhibit I.

THE COURT: What is that?

MR. VERVEER: It also makes reference to bank sponsorship, and it consists of some letters produced by the Comptroller of the Currency in response to a Rule 34 request, also some materials produced by defendants in response to a Rule 34 request. Exhibits I-1-A through C merely show, your Honor, that in the case of the Kennewick National Bank, a bank which we contend was a sponsored bank, blind carbon copies of reports of condition

following the bank examiner's examination of the bank were sent to the president of the Old National Bank of Washington, and from this we submit that the Court might infer—

MR. HARTMAN: What is wrong with that?

MR. VERVEER: Is it customary for your National Bank examiners to send reports of examinations to other banks?

MR. HARTMAN: It is customary for our National Bank examiners to be concerned with the condition of that National bank. It just relates to the condition of the National bank, and I see nothing wrong with it.

[306] MR. VERVEER: Isn't the condition of National banks regarded as something that is extremely confidential by the office of the Comptroller of the Currency?

MR. HARTMAN: It is regarded as extremely important by the office of the Comptroller of the Currency.

MR. VERVEER: Why, Mr. Hartman, would Mr. Leaf, who was at the time regional administrator of National banks send a blind carbon copy of this report to the Old National Bank?

MR. HARTMAN: I don't know, he may have been looking for help from the Old National Bank. Was that Kennewick?

MR. VERVEER: Yes, it is.

THE COURT: He probably knew they had an investment there of some character and wanted to see that that bank got into proper shape. But you can discuss the matter back and forth for quite a while if you wish. Do you have anything further you want to say to each other now?

MR. VERVEER: No, your Honor.

MR. HARTMAN: No, your Honor.

THE COURT: All right, let's go on with it then.

MR. JOHNSTON: I would like to make a comment [307] on these, your Honor.

THE COURT: You mean you want to make objection to it?

MR. JOHNSTON: Yes. I would like to make a formal objection.

Your Honor, in the case of Exhibit H that was just presented here, it at least had a semblance of an exhibit

here. But these papers, whatever, they deal with matters involving other banks with which the defendant in this action had no connection whatever, and they purport to be letters that are written here by authors who are not before the Court, there is no possible basis for the admission of these exhibits into the record on any basis, no foundation has been laid for them. And as I remarked earlier in the trial, your Honor, we are happy to have you look at this, in fact we are glad to have you look at this sort of thing, but we hate to have papers of this kind, with no foundation or basis for their entry into this case before we even get to the question of relevancy, a part of the record here.

[308] MR. VERVEER: We submit, your Honor, that Mr. Witherspoon's depsition provides the foundation for the entry of this evidence regarding sponsorship. Now, if the defendant would like to make a specific objection to any given document we would be happy to respond to that.

MR. JOHNSTON: It is not referred to in Mr. Witherspoon's deposition, your Honor, they are not referred to, and for the sake of preserving a record here we would certainly like to have this record clean, and with documents of this character in it it can't be a clean record.

THE COURT: Well, I suppose I have the wrong tendency, and that is to admit everything and then make a decision on it with regard to a lot of it. That's about the way I generally proceed in a court case.

If it has probative value, it may or may not, I am ready to express myself with regard to the Comptroller's approval of other banks' acquisitions around the state, and so in effect I just can't see what the determinative value is here.

MR. JOHNSTON: If I may make a suggestion, your Honor, and that is that your Honor further consider these to see if your Honor feels in its determination of this case, if there is any use or [309] purpose in these documents, and if your Honor does, well, then, rule whether or not they are admissible to take care of the record.

THE COURT: Do you want me to read them all? I don't want to because I just don't think they are going

to what the point is here, not that I am averse to thumbing through them but I have a very poor eyesight and they are hard to read. If you take a look at I-A, I don't know what kind of a copy you have, but I can't read this kind of material. Just take a look at it.

MR. VERVEER: Well, the government apologizes for that, those are the copies we got from the Comptroller, your Honor.

THE COURT: Well, I have lots of copies furnished me of this character and they seem blurred and I am getting old and my eyesight is not good and I have a little trouble.

MR. VERVEER: Perhaps if we could point out to the Court the relevance of portions with regard to the relevant issues here—

THE COURT: Well, I can find it and I understand the particular point that you are making here because I already understand what you are driving at.

This first letter, for example, apparently [310] the bank examiner found that the bank over there wasn't in too good shape.

MR. JOHNSTON: That's the gist of the letter.

THE COURT: That's what it says in so many words, he didn't like the way they were operating because maybe the FDIC might have come into the picture and he didn't want that to happen.

MR. VERVEER: Yes—

THE COURT: (Continuing) I understand what you're driving at and I've already said that; and didn't he, that is Mr. Wallace, if that's his name, already, or had a little stock interest in that bank and that naturally if he sent a blind carbon copy over to these stockholders or bank loan agencies some of these charterers or incorporators, whatever you want to call them, if they would be interested in knowing if this bank didn't look like it was in too bad shape and then maybe do something to straighten it out, change of officers, and watch that they are not making loans to people that don't seem to be able to pay and that kind of situation that probably existed. That's the point of it, I understand the point of it.

MR. MOEN: However, it would not be relevant to the issues in this case.

[311] THE COURT: Well, I have been trying to say that for about ten minutes. I don't know whether anybody has heard that or not. If you want me to use the microphone, I could use that mike, if you didn't hear it.

MR. JOHNSTON: Well, the only thing, your Honor, we wouldn't like to have any appellate court feel that your Honor was basing his decision on some of these things.

THE COURT: Well, I think if they would read the colloquy between counsel and the Court they could see and get the impression, as far as I am concerned, that I am not really impressed by these documents insofar as the issues here are concerned.

All right, I'll admit them. Does that take care of that?

MR. VERVEER: Your Honor, just so the record is clear, you have admitted Government's Exhibit I for identification?

THE COURT: No. I is the one that contains the material of the bank acquisitions—no, no, that was No. F and No. I is the one that shows that the bank examiners, or one of them at least, one of the bank examiners found he didn't like the way—like what he saw, put it that way, at the time of examination [312] and—I'll admit that. And what else?

MR. VERVEER: We have another exhibit, your Honor, Government's Exhibit I-2.

THE COURT: What does that say?

MR. VERVEER: Well, it's a letter that—

THE COURT: (Interposing) Well, it is going back to talk to them about these three, Pullman, Pasco and Richland?

MR. VERVEER: Yes, your Honor, and the government would point out that it was two years before the Tri-City National Bank in Pasco was merged into the Old National Bank and before the Richland bank was organized or opened for business, some sixteen months.

THE COURT: Well, let's see, Mr. Saxton was a Comptroller under Presidents Johnson and Kennedy—now, that's another aspect of this that bears a little discussion. I don't know what the present Comptroller's policy would

be under the new Republican regime. I know that the Justice Department and the Comptroller's office are under the new—not new, but the Republican regime. All right, for whatever it's worth, it is in.

MR. MOEN: Over the defendant's objection, your Honor.

MR. VERVEER: 3 is a memorandum which shows [313] that Mr. Cleveland, who is the Director of Market Research for the National Bank of Commerce, and Mr. Claeys who is the vice-president of the N B of C—well, at any rate, I call your Honor's attention to the bottom paragraph of the first page, and this relates to the banking situation in the community of Albion and also at Pullman, and I call your Honor's attention to the portion which states that it would be quite desirable for the N B of C to help sponsor the new independent bank in Pullman. This is the bottom paragraph.

Going on to the top paragraph of the second page, your Honor, he says it is recommended that the N B of C would consider the desirability of sponsoring a new bank at Pullman and so forth.

THE COURT: All right.

This is off the record, Mr. Reporter.

(Discussion off the record.)

MR. VERVEER: Your Honor, document No. I-4-A and I-4-B relate to the possibility of some interests of the Washington Trust Bank, what interest the Washington Trust Bank might have in a new state unit bank in the community of Pullman; and we don't offer these to show that the Bank of Pullman was sponsored by the Washington Trust Bank but they are merely [314] offered as examples of the sort of things that the National Bank of Commerce does and it shows their awareness and the sort of practices that take place.

THE COURT: You're establishing the fact that the N B of C is aware of what is going on?

MR. VERVEER: Yes, in terms of Bank sponsorship.

THE COURT: I don't think you have to prove that. I think you would find that—you have heard of the phrase "take judicial notice", and I can almost take

judicial notice of the fact that they are aware of what is going on in Pullman. All right.

MR. VERVEER: All right, your Honor, we would further state that they were aware of the sponsorship and it is a practice that is an alternative means of entry.

Now going on to I-4-C and D, your Honor, these relate to the possibility of—well, it relates to the community of Pullman opening perhaps a new organization or a new unit bank. I-4-D is the 4th paragraph; it's down in the memorandum—on this particular date, May, 1968, with relation to Andrews of course the senior executive then deals with the senior executive in N B of C and it relates to forming a new unit bank in Pullman. And the next paragraph [315] says, "I recommend that the N B of C seek out sponsors for a unit bank in Pullman" and so forth. Then on April, 1969, I-4 shows at the bottom paragraph Mr. Price and Mr. Maxwell Carlson discussed the matter, and this relates to testimony given here by Professor Smith and Mr. Carlson encourages the idea of co-sponsoring a bank in the Pullman area.

THE COURT: The president?

MR. VERVEER: Yes, your Honor.

THE COURT: All right.

[316] MR. VERVEER: Yes, your Honor. The last sentence, however, it says, "In the near future"—this is Andrew Price, "In the near future I will call our banking friends in Spokane, Washington Trust Bank (Old National Bank already has a bank in Pullman) to let them know of our interest."

Your Honor, the remainder of these documents are to the same effect, they are internal memoranda of the National Bank of Commerce, correspondence between the National Bank of Commerce branch managers and officials.

THE COURT: Did the N B of C ever go into Pullman?

MR. VERVEER: No, your Honor, they are not there.

THE COURT: All right.

MR. VERVEER: If your Honor would admit the bulk of the remainder of Exhibit I—

THE COURT: All right, it's in over Mr. Moen's objection.

MR. MOEN: Over objection.

THE COURT: All right.

(Government's Exhibit I for identification was received in evidence)

MR. VERVEER: Your Honor, the government now [317] refers to documentary Exhibits J and K for identification. We apologize for the shape of the document in Exhibit J. However, counsel for N B of C have graciously offered to try to reproduce these exhibits from their files to get better copies of them so we could replace the Court's copy.

Your Honor, Exhibits J and K relate to the history of the—the documentary history, as we have it, of the organization of the Columbia Center National Bank and to a lesser extent its existence as a National bank. The government contends that Columbia Center National Bank was sponsored by the National Bank of Commerce. That is important for this case, we believe, your Honor, to show the National Bank of Commerce's capability in the area of sponsorship, to show that the reluctance to do anything that might be regarded as sponsorship which has developed since the filing of this lawsuit was not always historically true, and also, your Honor, to indicate in a highly particularized way steps that a large statewide bank can take to virtually guarantee that a sponsored bank one day will be acquired by it. These documents—

THE COURT: When was this bank started?

MR. VERVEER: This bank was—got its preliminary charter approval, the preliminary approval [318] in June of 1968, it was open for business, I believe, your Honor, on July 1st or August 1st of 1969.

THE COURT: All right.

MR. VERVEER: Your Honor, these exhibits are very bulky. We would be very happy to reduce the Court's burden by pointing out parts of the documents that we think are relevant. If the Court would desire that, I would be happy to proceed.

THE COURT: Whose files are these from?

MR. VERVEER: Your Honor, these documents—almost all of these documents are from the files of the National Bank of Commerce. Some of them are from the files of the Columbia Center National Bank and were produced by Mr. Dean W. Loney, Chairman of the Board of the Columbia Center National Bank, pursuant to a subpoena duces tecum.

The documents in Exhibit J are all documents from the files of the National Bank of Commerce.

THE COURT: All right.

MR. VERVEER: All right, your Honor. If you would like to refer to Exhibit K-1. K-1 is a copy of a branch expansion committee meeting minutes dated August, 1965. The N B of C officers were present and noted, and the Court will notice that the Columbia Center—Columbia Shopping Center Tri-City [319] area is noted, this is the first indication we have of their interest in that area. At the time there was no bank there and no apparent way for the National Bank of Commerce to establish a de novo branch.

K-2 is a branch expansion committee meeting minutes of November of 1965. Drawing the Court's attention to the paragraph marked "Columbia Center" in the middle of the first page, particularly the sentence, "The suggestion was made that we attempt to obtain the help of a California bank in financing stock purchase in a new bank by some of our friends so that we might control any bank established with our blessings in the Center."

K-3 is similarly a branch expansion committee meeting minutes, December of 1965, and the second page, your Honor, at the bottom there is the notation, "The Committee strongly favors a branch in Columbia Center, and Mr. Stowell will pursue", who is the executive vice-president of N B of C, "with Mr. Allison and Mr. Sherwood,"

who are developers of the Center, "the manner in which the location will be established."

K-4 is an internal memorandum from the N B of C vice-president to Mr. Andrew Price, chairman of the Board, providing a list of candidates for the unit bank in the Kennewick-Richland area. All of [320] these men who were candidates to head the unit bank are people associated with the N B of C.

K-5, your Honor, is an internal memorandum from Lyle Beavers, at the time the vice-president and branch manager of N B of C's Kennewick branch, to Andrew Price, in March of 1967. Mr. Beavers is presenting some recommendations on the organizers—or prospective organizers of the bank. Towards the bottom of the page he also is discussing the possibility of finding an agent for the bank. There is a cross-reference in Exhibit J, your Honor, to J-45.

K-6, your Honor—

THE COURT: I don't want to go through these item by item, counsel, because I think I get the drift of the information just by reading the first items in here as to the application on Mr. Loney's part in the obtaining of the charter for the Columbia Center and the fact that they got help from the N B of C, I think there isn't any doubt about that, that's all the way through it. You can see the lease they have with the people, you wouldn't want me to read all that, would you, that they have for this space, and the contractors came in with a bid too high and they decided they wouldn't accept that; all kinds of things in here.

MR. VERVEER: Right, your Honor, we were [321] going to point out in the lease—there was only one paragraph in each of their drafts of the lease that we want to point out, that was the paragraph involving the rentals whereby the rental by the King County Building Company, which is another Marine Bancorp subsidiary, to the Columbia Center National Bank goes from $7200 a year in each of the first three years and $30,000 a year commencing with the fourth year, which was July 1st.

Your Honor, we would like to call the Court's attention particularly to just a few of the subnumbered ex-

hibits in Government's Exhibit K. If you will bear with this, I think we can conclude this quite promptly, your Honor.

K-36 is a letter written by Robert F. Buck to Mr. Dean Loney explaining the relationship between the Columbia Center National Bank and the National Bank of Commerce. The letter was written for the purpose of attaching it to the charter application for the edification of the Comptroller of the Currency.

THE COURT: As a matter of fact, when I thumbed through this, I saw a letter in there from an officer of the N B of C to Mr. Loney which had been drafted by N B of C so that Loney would know how to make an application. I mean this is all that type of thing. [322] I have read it all—I mean I have thumbed through it all. So I understand it. Do you want to offer it? I will admit it.

MR. VERVEER: All right, your Honor, we offer this exhibit, Government Exhibit K.

(Government Exhibit K for identification was received in evidence)

MR. VERVEER: Government Exhibit J, your Honor, this exhibit consists of internal memoranda of the National Bank of Commerce relating to the Columbia Center National Bank. If your Honor will read through it, you will see that the National Bank of Commerce's activities with respect to the Columbia Center National Bank go considerably beyond merely offering bank stock loans to the organizer. If I can take one more moment of your Honor's time, I would like to point out one particular page, your Honor, at page 20, we submit to you that the memorandum dictated by Andrew Price August 15, 1968, found at the bottom of that page demonstrates the real purpose of N B C's activities.

THE COURT: J-20?

MR. VERVEER: Yes, your Honor.

THE COURT: All right.

[323] THE COURT: I don't have any doubt that N B of C as far as Columbia Center is concerned tried to keep the stockholders friendly. If that is what you are trying to establish, I am satisfied of that from read-

ing it. I am satisfied of that, because there isn't any doubt about that but let me ask you a question, counsel, in connection with that. Am I correct in assuming that N B of C, Seattle-First, Pacific National Bank of Washington, the Old National Bank of Spokane, the Peoples National Banks, all are presently trying to go into new areas that they think are fertile areas for banks, with their branches. All of them have, have they not?

MR. VERVEER: Yes, they have.

THE COURT: That isn't just confined to this bank, the National Bank of Commerce.

MR. VERVEER: Not at all, your Honor.

THE COURT: And they don't go in there, do they, just because they like the people in the community.

MR. VERVEER: Absolutely not.

THE COURT: This is a very competitive proposition among all of these banks, they don't want to see the Seattle-First outdo them, so to speak, isn't that the idea?

[324] MR. VERVEER: I believe so, your Honor.

THE COURT: Isn't that the conclusion that one could draw, that they are very competitive, and that is why they try to get into these areas? That is the way I feel about it. But what do you conclude from that, when you start talking about pro and anti-competitive situations between these banks?

MR. VERVEER: Well, your Honor, I suppose when we talk about the competitive situation, we would have to speak with reference to some defined market. In general these banks, and particularly the larger banks in the state, I suppose view themselves in terms, as being interested in any attractive market in the state. And, they are anxious to be there, because there are money-making possibilities.

THE COURT: But more than that, running through all of this is kind of a competitive attitude, isn't it? They want to be competitive with the other banks.

MR. VERVEER: I think that is right, your Honor, in the sense that they are all trying to get the same dollars, so to speak.

THE COURT: That is what this proves, that they are really competing, doesn't it?

MR. VERVEER: It proves that they are trying to gain entry into an area where they think they can [325] make money.

THE COURT: I know, but doesn't that prove that they are really competing with each other? Otherwise, they would just sit back and say go ahead, let the other bank go in there and get all the gravy, if you want to use that term, but that isn't their attitude, and that isn't the way they have been operating, is it?

MR. VERVEER: As Professor Smith indicated, we think it is more of a rivalrous activity, that the only distinction that I would want to draw in terms of that is—

THE COURT: Washington State and the University of Washington are intense rivals in football, but I would say they also competed this fall, and fortunately for Washington State, they competed harder. But I think that is a similar situation, these banks may be rivals, but they are competitors, too.

MR. VERVEER: I guess, your Honor, the central point of our case is that there are competitive and there are anti-competitive means by which these banks can get into new markets.

THE COURT: Well, the ultimate decision for me, counsel, in this case is whether or not it is good for the people, not particularly for the banks, but is [326] it good for the people to have the National Bank of Commerce into the Spokane area. Isn't that about the size of it, when you talk about pro-competitive, and anti-competitive, if it is anti-competitive then it is not good for the people, and if it is pro-competitive, it is good for them.

MR. VERVEER: I think that is absolutely right.

THE COURT: All right, that is the way I look at this case, and that is the purpose of the Antitrust Division of the Justice Department, to be sure that somebody doesn't get a monopoly, and then the people, as you say, get gouged, and in this case, that is all I am concerned with.

All right, is there anything further?

MR. VERVEER: Just so that we are clear, your Honor, Government's Exhibit J has been admitted?

THE COURT: Yes, I have admitted that.

All right, now is there anything further that you have that you want into the record?

MR. VERVEER: Yes, your Honor.

THE COURT: I should never have said that.

MR. VERVEER: Relating to this issue that we have been discussing, that of sponsorship, and of entry possibilities, the government would like to [327] admit, or would like to move the admission in its entirety of certain of these depositions. We do that mainly to avoid a dispute about our admitting—

THE COURT: Whose depositions?

MR. VERVEER: The deposition of Ralph J. Stowell.

THE COURT: He is a National Bank of Commerce man, isn't that correct?

MR. VERVEER: He is a retired N B of C senior executive.

THE COURT: All right.

MR. VERVEER: The deposition of Robert F. Buck, the senior vice-president of N B of C.

THE COURT: All right.

MR. VERVEER: The deposition of Frank A. Abersfeller, who is an assistant vice-president for correspondent relations. He is with the N B of C.

THE COURT: All right.

MR. VERVEER: The deposition of Mr. Maxwell Carlson.

THE COURT: All right.

MR. VERVEER: The deposition of Andrew Price, Jr. The deposition of Dean W. Loney, chairman of the board of—

THE COURT: I know who Mr. Loney is. He wins [328] some and loses some in this court occasionally.

MR. VERVEER: We would like to move the admission of those depositions in their entirety, your Honor.

THE COURT: Is there any objection to that?

MR. MOEN: We renew the same objection that we made previously.

THE COURT: As to the immateriality aspect of it and so forth?

MR. MOEN: Immateriality, and also on the grounds that all of the objections were reserved until the time of trial.

THE COURT: Are there particular things in those depositions that you think are immaterial, is that the basis of it, Mr. Moen?

MR. MOEN: Not in the depositions, as much as the exhibits that are attached to the depositions.

THE COURT: You mean many of them are documents that came from the files of the bank, and are attached to the depositions?

MR. MOEN: Yes, with no foundation having been laid for their admission.

THE COURT: All right. Well, I will admit them.

MR. VERVEER: Thank you, your Honor. Now, your Honor, we have nothing further until tomorrow when [329] Mr. MacMurray gets here.

THE COURT: All right, Mr. Moen.

MR. MOEN: We are ready to proceed with our first witness, your Honor. I understand that commencing our case at this time will not prejudice our right to make such motions as we deem proper at the close of the plaintiff's case.

THE COURT: Well, that is right. I only do it this way to expedite the matter.

MR. MOEN: I will call Dr. Charles Haywood.

## CHARLES F. HAYWOOD,

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. MOEN:

Q Would you please state your name?
A Charles Haywood.
Q What is your address?
A 3309 Overbrook Drive, Lexington, Kentucky.

Q By whom are you employed?
A The University of Kentucky.
Q In what capacity?
A Dean of the College of Business and Economics at the University of Kentucky.
[330] Q How long have you been with the University of Kentucky?
A Since 1965.
Q What subjects do you teach or have you taught?
A I have taught basic courses in economics, statistics, money and banking, commercial bank management, and courses concerned with the regulation of commercial banking and financial markets.
Q What degrees do you hold, and from what schools?
A I have a Bachelor's degree from Berea College in Kentucky, and a Master's degree from Duke University, and my Ph.D. is from the University of California at Berkely. All of those degrees are in economics.
Q When did you receive those degrees?
THE COURT: Just your Ph.D.
THE WITNESS: In 1955.
Q Now do you belong to any honorary societies?
A Yes, several, Phi Beta Kappa, and others that are based on scholarship.
Q Are you familiar with the current literature in the field of banking, economics, competition, and antitrust laws?
A Well, that is pretty broad, a broad area. I would say that I am familiar with literature as it relates to commercial banking, yes.
Q And have you done work in the antitrust field?
A Well, I have studied in the area as it relates to [331] banking, and I have advised the banks on acquisitions and mergers by holding companies, with respect to particularly the issue at hand here, the potential competition doctrine.
Q Have you had any working experience in the field of banking?
A Well, before I went to the University of Kentucky in 1965 I was director for research for the Bank of America in San Francisco.

Q And do you now sometimes work as a consultant to banks?

A Yes, I do, and I am also an advisory director of a small bank in Lexington, Kentucky.

Q Have you worked in any banks in the State of Washington?

A Yes, I was out here I think in February of 1972, just a little less than a year ago now, to work for Washington Mutual Savings Bank on a matter involving acquisition of the Grays Harbor Savings & Loan Association.

Q Now, have you read the application to the Comptroller for the approval of this merger between National Bank of Commerce and the Washington Trust Bank?

A Yes, I have.

Q Have you read the report of the Justice Department to the Comptroller on the competitive factors involved in the proposed merger?

[332] A Yes.

Q And reports of the Federal Deposit Insurance Corporation?

A I have read various documents that led up to the filing of this suit.

Q Including the report of the Federal Reserve Board?

A Yes.

Q What else have you done to prepare yourself to give opinion evidence in this case?

[333] A Well, I have reviewed the plaintiff's statistical exhibits and some of the material that they have introduced in the last day or two and in general have familiarized myself with the facts related to this case as they are reflected in the various documents.

Q Have you been in attendance during the course of this trial?

A Yes.

Q And you have heard the evidence adduced?

A Yes, I have.

Q This might be a good place for voir dire, your Honor.

THE COURT: You want him to speak, that's what voir dire is.

MR. TORRE: We have nothing at this time, your Honor.

THE COURT: That's my understanding of voir dire and on cross-examination you can cover a multitude of things.

Q (By Mr. Moen) Did you recently complete a document on potential competition?

A Yes, in the early part of 1972 I wrote what I would call a monograph which is entitled Potential Competition Doctrine and it is an attempt to explain the potential competition argument in language that bankers can understand.

[334] It was a difficult job writing it I might say but that was the impetus for the study and I tried to evaluate certain aspects of it and some of its relevance to commercial banking.

Q Has the study been published?

A Yes.

THE COURT: Concerning what you said about making the bankers understand, of course that drew a response from the bankers in the back of the room.

THE WITNESS: I think one or two of them have tried to read it, sir.

Q (By Mr. Moen) When was the study published?

A I don't remember the exact date. I think I finished it sometime around June of 1972, it may have been published in July or August.

Q So it is a very recent report?

A Yes.

Q Now how would you describe the potential competition doctrine?

A Well, the potential competition doctrine, as I indicated, demonstrates that there may be an anti-competitive effect in a merger even though the merging parties are not direct competitors, even if they are not now in competition. The Potential Competition Doctrine argues that there may be a lessening of competition due [335] essentially to the idea that one of these merging partners may be a likely potential entrant into the market area of the other merger partner, and that if you eliminate a potential entrant, then you have lessened competition under certain circumstances.

THE COURT: Let's see if I understand what you're talking about; maybe I am in the same category as bankers. But the N B of C and the Washington Trust, if you merge the two of course there is no competition, could not be between the Washington Trust and N B of C because they are now one; but before the N B of C came in, without the merger they would be a competitor of Washington Trust—true?

THE WITNESS: Yes, but I think we covered this ground. As a matter of fact, I think there are several things that I will comment on later. I don't want to argue about it and I would like to be responsive to that because maybe we can help clarify some of this.

I believe that in Dr. Smith's testimony there were statements about there being two effects under the potential competition doctrine. One of these was characterized as being the wings theory, and that is that in a market area that you have, in a given market area, you may not have enough competitors to assure that you are getting adequate competitive performance [336] in that market, but there may be on the periphery of this market potential entrants, and the threat that one or another of these potential entrants might come in restrains these firms in the market from acting in an anti-competitive way.

If you eliminate a market potential entrant in such a situation, then presumably the firms in the market are released from this restraint that this important potential entrant imposed. That is the wings theory, and that is aimed at demonstrating that in certain kinds of markets, those that are not competitive or not adequately competitive, there may be a lessening of competition.

Now, the other effect, which is I think the point that you were stating there, sir, is that if you eliminate the potential entrant, then you eliminate a possibility of having another competitor in the market. And the way this is phrased usually, and I think that it has been phrased in this case, is that you will eliminate a future source of deconcentration in the market.

Now what you have said, that comes to the same thing, your Honor. In other words, you are eliminating another firm that might come into the market and add more competition, or if we want to talk in terms of [337] concen-

tration, that might in some degree deconcentrate the market. So, there are two effects that we are talking about in a potential competition case.

Q How do you disinguish a merger involving potential competition from a merger involving direct competition?

A Well, in direct competition—in a merger involving direct competitors you of course have to define the line of commerce and the relevant geographic area, market area, and given that, have to find that product line dealing in commercial banking. If there is a specific geographical area that you find that you get two banks that are in direct competition in the area and they are trying to merge, now, that merger increases or results in an increase in the concentration ratio of that market, or the share of the market, you know. The resulting bank obviously holds more than just one bank, than either of the two banks before the merger, and you eliminate, clearly you eliminate the amount of competition that exists between the two banks. In other words, a direct merger of competitors is inherently, and I stress that word, inherently anti-competitive, you know. And the structural measures that we have, such as the concentration ratio and number of competitors in a market, they give you a clear signal of this anti-competitive effect. The concentration goes up and the [338] number of competitors goes down by one. So you have an inherent anti-competitive effect in a merger of direct competitors, there is no way around it, you know, it is there.

Now, in merging under the Bank Merger Act as amended in 1966, the regulatory authorities passing on these mergers may go ahead and say, you know, "Even though there is this anti-competitive effect, are there benefits to the public convenience and need or, if you will, pro-competitive effects that offset that inherent anti-competitive effect?" In other words, mergers of direct competitors are not barred but there must be some or a substantial pro-competitive effect to offset the anti-competitive effect, which has to be there.

Now, the pro-competitive effect—in a direct competition case, whether there is a pro-competitive effect turns on the question of probabilities, because it has to do with what will be the performance of the resulting bank, you

see. In other words, you are trying to look ahead and see what's going to be, what's going to be the impact of having a larger bank, one that may have more resources and more capacity to compete with other banks, economies of scale perhaps, and you have to then try and analyze and assess as to what the [339] pro-competitive effect might be, and then attach, I think, some probability or see how likely it is that this would occur. And so you are dealing with an inherent anti-competitive effect versus the probabilistic pro-competitive effect.

Let me contrast that, and I don't want to ramble on too much, but let me contrast that with the way I think a merger of potential competitors shapes up in terms of anti-competitive and pro-competitive effect. We are not talking about an inherent anti-competitive effect in a merger of potential competitors, that is, in a merger of firms that are not in direct competition. We have to say that there may be anti-competitive effect. Now, whether there is anti-competitive effect depends upon whether the wings theory applies in the case.

Q Do you think the wings theory has any application in this case?

A I don't think it does. I think that the wings theory, it strains the potential competition argument in this case. That is, in order for the wings theory to be present—or the wings effect, let's call it, in order for the wings effect to be present it has to be established that you have a market where there is a market power being exerted on some of the present competitors in that market—where their behavior is influenced by [340] banking on the periphery. You have to establish that there is a likelihood or a possibility that a bank will enter, that the particular merging party would enter, you see, and this market he can enter, and you have to establish that he could enter.

We had a lot of controversy in this case already over whether the National Bank of Commerce can legally get into the Spokane market.

THE COURT: Let me ask you—is that all right?

MR. MOEN: Yes, go right ahead, your Honor.

THE COURT: Assume for the sake of argument that they could go in and acquire American Commercial, they are in the market with American Commercial, does the present posture of the Pacific National Bank of Washington tell you anything about what kind of competitive effect that would have if they did acquire the American Commercial?

THE WITNESS: Excuse me—

THE COURT: You know what I am driving at?

THE WITNESS: Yes, yes, sir, that they would be going in—that the N B of C, assuming for the sake of agument they could get in by a foothold acquisition as it has been characterized by the plaintiff's witness, it doesn't look like they'd have much of a pro-competitive [341] effect in this by coming in this way, that is on a small scale, maybe, you know, one or two or a limited number, a very limited number of branches. There are many aspects of this case that limit the significance of the foothold entry in this market, but in my view we are not talking anti-competitive effect, we are talking about whether it is more pro-competitive for the N B of C to come in by acquisition of the Washington Trust Bank or to come in by some other means. Will it result in more improvement in competition or increased competition for the N B of C to come in by acquiring Washington Trust than by coming in through acquisition of the American Commercial, which I understand is presumably under the ten year limitation about acquisition? But, in any event, assuming that it could get in that way or by coming in through a sponsored bank, the issue then I think in this case boils down to how much pro-competitive effect do you get by alternative A versus alternative B, because I don't think the wings theory is significant enough in this case to attach any weight to it.

Is that responsive to your question, sir?

THE COURT: Well,—

MR. MOEN: Okay, Doctor.

THE WITNESS: I would like to make one further [342] point and that is on the question of the wings theory. And that is that in other—that ordinarily where

we have a question of potential competition in banking, the question of whether the bank, that is, the acquiring bank, that is the one seeking to merger into the market, the question that ordinarily is involved here is, Would it be economically feasible for this bank to come into the market by forming a new bank or a new branch, and if apparently feasible from a business point of view, could the bank get the approval from the Comptroller of the Currency and the state banking authorities for a charter or a branch certificate. In other words, it involves partly business judgment about whether it is economically feasible to come in de novo or through another foothold acquisition, and whether the regulator thinks it would be in the public interest and the public interest would—whether another bank would serve the public convenience and need. Now that question is present in this case.

[343] Would it be economically feasible to form another bank in Spokane? Could you get the regulator, the chartering authority, to approve it? But we really haven't gotten down to those issues because we have got on top of that a contrast to other cases involving potential competition. We have got this question of whether it can be legally done under Washington law.

You know, we haven't even gotten down to the question really of saying how much incentive there is to enter this market in terms of economic feasibility of a new bank or a smaller acquisition. So that I say that the methods of entry—of possible entry sketched out in the—as set forth in the pretrial brief from plaintiff, such as sponsorship, buying a branch from another bank—I think there are—were three others. But the fact that they had to go through that sort of thing in trying to demonstrate how NB of C would get in—might get into this market, suggests to me that it would be so difficult and so devious that the present competitors in Spokane really don't regard N B of C as a significant potential entrant other than by acquisition of Washington Trust Bank. In other words, it is a question—for the wings theory to hold you have to say that the possibility that N B of C [344] would come in or the likelihood that N B of C would come in by some other means, is that sufficient to influence behavior in that market.

Now, I think that the very fact that there has been—that such means would have to be employed, such extreme means or devious means, suggest that this—that the threat of N B of C entering this market by such a means is so unlikely that it has not influenced the behavior of firms in this market.

Q Would you conclude from that then that N B C at this time has no competitive influence in the Spokane market?

A I would say that N B C has not been a factor in influencing the behavior in the Spokane market as alleged under the wings theory.

Q Now, Doctor, you said that you were concerned with two factors, the wings theory and also deconcentration influence in the market?

A Yes.

Q I would like to ask you if you think that a merger of two banks not in direct competition will necessarily eliminate a source of potential deconcentration in the relevant market?

A Well, I think, of course, again it turns on the question of whether there is incentive for the bank to enter on a de novo basis or on a foothold acquisition basis, and [345] whether it legally can be done. But my point I think is, what I made a while ago and that is that here—my own view of this is that we are not talking about an anti-competitive effect when we talk about this potential source of deconcentration. We are talking about what would be the pro-competitive effect of coming in one way versus the pro-competitive effect of coming in another way. Now, that seems to me that that goes really to the convenience and needs aspect of the question, and I think, you know, there is—the Court this morning made some comment about the Comptroller and the Justice Department, and that I interpreted perhaps erroneously, but perhaps correctly, I interpreted it as suggesting that maybe they ought to get together on some—have a little better understanding on some of these things. And I think that goes right to the heart of the problem, why has there been some misunderstanding and perhaps friction, conflict between two government agencies. And I think it has

to do with this; that when you talk about deconcentrating a market, that that is saying that this market needs more competitors in it, it needs more banks.

Now, the determination of the number of banks in the market has been the responsibility, for national banks, of the Comptroller of the Currency, and the state [346] banking authorities at the state level. And the public policy has been aimed for a—certainly since the 1930's, early 30's, at regulating the number of banks in such a way to avoid bank failures, to avoid instability in banking markets while at the same time meeting the public convenience and needs. So that the question of what is an adequate number of banks in a market area goes to this question of the public convenience and needs.

The banking authorities—the bank chartering authorities limit the number of banks in an area under this public policy aimed at avoiding bank failures, but at the same time they try to accommodate as much entry as they can, consistent with this public policy to assure that the public convenience and needs will be met.

When it is asserted that you need another competitor in this market, that you need—when you say deconcentration is needed, that is the same as saying that another competitor is needed, and I think that gets over into the area of the Comptroller of the Currency's responsibility.

Q From a structural standpoint, do you consider the Spokane market—

THE COURT: Let me ask you a question first, [347] I just keep going right back to the same old thing. Apparently I am what you would call one way—do you understand what that means, I can't get this out of my mind, if another competitor in the market is needed so badly in the Spokane market, why isn't the Pacific National Bank of Washington doing better in the market?

THE WITNESS: That's a very good question.

THE COURT: That's the question I would like to ask, that is the thing that I keep looking at here. I just see them in the market, they are in the market, they are owned by Western Bancshares, and as they say on the street, that is a potent organization as far as banks are concerned. They have all the facilities, the knowhow, and

they just don't seem to be doing any good over there, do they?

What are their deposits?

THE COURT: Ten million, about two and a half percent of the market share as I recall. I don't have the—

MR. MOEN: We are going to put that in evidence later on in our case.

MR. TORRE: Eleven million in total deposits.

THE WITNESS: 2.2 percent.

THE COURT: To repeat my question, they have been there quite a while and they don't seem to be going [348] anywhere.

THE WITNESS: I think it suggests that another competitor would—wouldn't have any better chance of getting anywhere, and—

THE COURT: Then the next question is, I didn't want to cut you off, the next question is if another competitor came in by the acquisition method of American Commercial or came in by sponsoring a new bank, they would have about the same results as the Pacific National Bank of Washington has, would they, if they had a ten million dollar bank over there?

THE WITNESS: They would not be a significant competitive factor in my opinion, sir, and I based that on—I mean this Spokane market structurally has—is a competitive market, and I would disagree with Dr. Smith, the plaintiff's witness on this, in that I think the—under the approach that he used, and I think perhaps he said this, that all banking markets are concentrated, none of them are competitive under his definition.

Well now, that doesn't give us too much to work with when we are trying to say whether a particular merger is in the public interest, and I think if you look at this market over in Spokane, you have got, according to—

[349] THE COURT: I think we are going to take a brief recess so we can get back to the question and answer method of trying a lawsuit.

All right, the court will be at recess.

(At 11:17 a.m. a brief recess was taken.)

THE COURT: When we recessed the witness was starting to talk about the statement made by Dr. Smith concerning the concentrated market, and the existence of large banks in the market, and their relative relationship to each other. Isn't that about what we were going to go into?

THE WITNESS: Yes, sir.

THE COURT: Now, Mr. Moen, would you ask him, and here is another issue that the government has presented to this Court, ask him his opinion concerning the unit bank, which is Washington Trust, and its competitive relationship with the banks in the market, as contrasted to the N B of C if they acquired the Washington Trust, and its relationship to other banks in the market, the "we meet everywhere" theory, and the unit bank is therefore more of a competitive factor. You have heard that, I have heard it, and I remember it. Isn't that right, isn't that an issue that has been raised?

[350] MR. MOEN: Yes.

THE COURT: Ask him about that, and his opinion.

Q (By Mr. Moen) First may I ask you Doctor, do you consider the Spokane market to be a competitive market?

A Yes, I think that it is, from a structural point of view, a competitive market, because you have seven banking organizations in this market, according to plaintiff's exhibit, and among those seven you have the largest banking organization in the State, Seattle-First, you have the third largest, Pacific National Bank, and you have the fifth largest, Washington Bancshares. And in addition to that you have two large Mutual Savings banks competing in this area, and I am not arguing about the line of commerce in this regard, but it is a fact of life, that the Mutual Savings banks are competitive in certain segments, important segments of the business. Now those two Mutual Savings banks that are in there are the two largest in the state, and they are larger, I believe, than the sixth largest commercial bank in the state. So that competing in Spokane, you have five of the seven largest banking organizations in the state right now.

Q Now, Doctor, assume the merger takes place, will

the [351] market be more competitive, or less competitive, or will it be the same?

A I think that gets to the question that the Court asked. It will be more competitive with the National Bank of Commerce in there, for the reason that you will be replacing a bank that has limited competitive ability, vis-a-vis these larger banks in there, with the second largest bank in the state, will have more capacity to provide loans, to provide various kinds of specialized services, and more resources to sustain a competitive battle than the Washington Trust Bank now has, vis-a-vis these large banks that are in there. I mean after the merger you will have six of the seven largest banking organizations in the state competing in this market, and I think that that is a structurally competitive market.

Q Would you compare the competitive capability of the National Bank of Commerce with that of Washington Trust Bank in the relative market?

A I think that the National Bank of Commerce can bring greater competitive resources to this market than Washington Trust Bank now has.

THE COURT: Did you want to go into detail about international services, and that type of thing? Is that the idea?

[352] MR. MOEN: Well, I had planned to put that on with other witnesses, your Honor.

THE COURT: All right, go ahead. I shouldn't be trying the case.

MR. MOEN: No, your Honor, I welcome that.

Q (By Mr. Moen) Assume Doctor just for the sake of argument that the National Bank of Commerce could enter the Spokane market de novo, or by a foothold entry. How do you assess the probable pro-competitive effect of that kind of entry against the pro-competitive effect of acquiring Washington Trust Bank by merger?

A I don't think that de novo entry by the National Bank of Commerce, or the foothold entry, would have a significant pro-competitive effect. I think that the scale on which the National Bank of Commerce would be able to operate would be so small, particularly if they came in de novo and had just one office, which would be all that

they could acquire, or have, under certain of the methods that have been suggested for getting in, that they just couldn't have much, wouldn't have much clout in this market because the resources would be limited, and it wouldn't be worth committing the kind of competitive resources to really make an impression, a strong impression in this market. Now if they come in with the acquisition of Washington Trust Bank, then [353] they have a big stake in this market, they're going to have to do a lot of things to make that acquisition a profitable acquisition, you know, to get the performance that is needed in order to make it a business proposition. And just to maintain what Washington Trust Bank has is going to require considerable competition.

Q Would their competitive capacity, coming in de novo, within a time frame of ten years, I think that is what Mr. Smith suggested, would that type of entry be as competitive as coming in through merger with Washington Trust Bank?

A Well, a lot of things can happen in ten years. I think that is too far off in the future when we are trying to talk about pro-competitive effect. In other words, we are talking about at best a small pro-competitive effect through such entry, and then if we say, well, what about ten years from now, I think that reduces even more of the weight that one can attach to that sort of thing.

Q Well, if they came in through a nominee bank, assuming that they could come in through a nominee bank, would they be any immediate factor in the market?

A Well, I don't think they would be, other than what, you know—one more bank in the area, if it could make a go of it, would have some effect, you know, but it wouldn't [354] be significant, and I think that the fact that N B C is their sponsor, or might be a sponsor, I don't think that would add anything to it. I mean the thing that they would be providing the bank would be correspondent banking services. They can provide those services to any bank, so I don't see that the sponsorship adds anything. This gets into an area now that is under question, that is under antitrust law, and that is the question of how close these relationships are. You know, when you don't have

more than 50 percent control, can you really do anything to help a sponsor bank or even an affiliate bank where—

MR. TORRE: I would object to that, your Honor, I believe he is talking about a legal conclusion, and I don't believe he is qualified.

THE COURT: Well, I will let the answer stand, go ahead.

Q (By Mr. Moen) Doctor, do you attach any significance to the fact that the National Bank of Commerce will not be able to branch in Spokane and the Washington Trust Bank can?

A Under the law as I understand it the acquisition would, of Washington Trust by the National Bank of Commerce, would mean that there could be no more branching—

[355] Q (By Mr. Moen, interposing) Do you mean it prohibits the National Bank of Commerce from establishing de novo branches—

A Well, first of all I think that the branching situation in Spokane looks pretty adequate right now. They have a ratio of population, population/office ratio of about 5000 people per banking office and this is below the national average. I mean, they've got more banking offices in relation to population than you have in the nation on the average, that is for a city of that size. For a city of this size that's a particularly low population/banking office ratio. And I just, you know, I think there's been a lot of opportunity for branching that has been exploited.

Further, branching is just one way that banks compete. There are other ways that—

Q (Interposes) Well, what I'm getting at, do you see any pro-competitive results from Commerce going in so far as the ability of the other banks to branch is concerned?

A Well, I think this argues against the idea that this merger would result in an entrenched position by the National Bank of Commerce. I mean it couldn't go out and preempt banking offices which is sometimes alleged in a case like this. I think, furthermore [356] branching is just one way of competing and if the National Bank of Commerce can't compete by adding more branches, it will

compete in other ways—you know, ways such as being more competitive with respect to loan rates and service charges and so on—to make up for whatever deficiency it may have in this branching.

THE COURT: Mr. Moen, ask him about rivalry as contrasted to competition.

MR. MOEN: Yes, your Honor.

Q (By Mr. Moen) Could you comment on that, Doctor, with respect to the differences between rivalry and competition from a technical point of view?

A Yes. The argument has been made by Dr. Smith with respect to this, and it's a very technical argument, and it starts from the assertion he stated that if you do not have freedom of entry into a market, then you do not have competition. That is what he meant, and what I would say is you do not have *perfect* competition, you have something less than theoretical, model perfect competition. Which likely doesn't exist except in theory, you know. If you want to call a whole range of market situations that approach perfect competition, if you want to call that rivalry—but it's really just arguing about terminology.

[357] perfect competition, he described one kind of interpretation of markets that had less than perfect, or were less than perfectly competitive, less than theoretical or model, and I think that is an oversimplification of the commercial, as it relates in the market like banking firms.

Q Do you look at it then as a strictly technical explanation or—

A Yes, it is a technical explanation. And in such an explanation you've got to be very careful to be sure you understand what the assumptions are—and Dr. Smith did not explain them very—in deciding how much weight is given or attached to it, to that discussion about entry, in saying where you do have, I should say do *not* have freedom of entry you do not have competition. Well, you don't have freedom of entry in the banking market in this country because it is regulated.

MR. MOEN: You wouldn't conclude from that then that there is not competitive performance, speaking of competition in the banking industry—

THE COURT: Well, what he is doing, he is trying to get you—he is trying to testify for you, he is trying to get you to agree with the statement that he has made, and that's a common thing we all do.

MR. MOEN: Well, the witness I am sure [358] understands what I am doing.

THE COURT: Yes. Do you want to repeat it?

MR. MOEN: Well, okay. Based on the number and size of the competitors that will be in the Spokane market after the merger, is it your conclusion that the market will be more competitive than it is now?

THE WITNESS: Yes, sir, I think it would be more competitive, considerably more competitive because you have six out of seven of the largest banking organizations competing, whether you call it rivalry or competition, but it makes for a market I think in which there is a high level of performance in the public interest.

Q (By Mr. Moen) Now, Doctor, plaintiffs have introduced a number of exhibits with data about the banking structure in Washington. Have you had an opportunity to examine these exhibits?

A Yes, sir.

Q Do you think that they demonstrate an inadequate degree of competition in the State of Washington?

A No, my opinion is that these various exhibits do not demonstrate that the degree of competition in banking in Washington is inadequate. I think it has failed to demonstrate the inadequacy of the competition.

Q Do you have the exhibits with you?

A Yes, I have an exhibit, A-1 I think, and that shows the [359] share of the total deposits in the ten largest commercial banking organizations in the State of Washington. We might call these concentration ratios on a state basis. It shows, for example, that the Seattle-First has right at, let's see, this is at the end of 1971, had 32.9 per cent of the total deposits, commercial bank deposits.

Q Now, are figures of that kind an accurate gauge of the competitive condition in the market?

A No, I think that even when they are defined for relevant market areas, concentration ratios are at best crude indicators of the competitive conditions, and when

you compute them over a broad geographic area such as the state or a region, a major region within the state, that is not a relevant banking market. Then they are meaningless as an indicator of the competitive conditions.

Q What would you say with respect to the local character of the bank business?

A Well, banking is mainly local in nature, that is, banking markets tend to be very localized markets dealing in a usually well-defined or reasonably well-circumscribed area where there are concentrations of population.

Q Is that true of banking markets in the State of Washington?

A Yes, I think it is. You have a number of very small banking markets in the state. Then you have the Seattle, Everett and Tacoma areas, which are really [360] probably several distinct markets.

Q Would you consider the entire State of Washington as a single banking market?

A No, I would not.

Q Would you consider the area east of the Cascades in the State of Washington as a single banking market?

A No, this is too broad, too heterogeneous to regard as a banking market.

Q Is it accurate to say that both of those areas constitute a large number of banking markets?

A A large number of local banking markets, yes.

Q How about the counties as a unit? Does the county constitute a banking market?

A Not necessarily. The question of what is a banking market turns on where the bank is located and where it draws its business from, and it might just draw it from part of the county and it might just draw business from all over the county and it might draw business from two parts of two counties and so forth. In other words, political boundaries don't really tell us too much about the banking market.

[361] Q This question may be self-evident, but would the merger of Washington Trust Bank and the National Bank of Commerce increase the market share of the merged banks in the Spokane market?

A No. I mean the market shares remain the same in the relevant market areas. Now, if you,—of course, put-

ting the two banks together, I believe this shows that the National Bank of Commerce has 22.8 per cent in the state, Washington Trust Bank has 1.4 per cent of the commercial bank deposits in the state. You put them in one bank, that's going to raise that ratio for the state but it is not going to raise the ratio in the relevant banking market.

Q Is that increase in ratio meaningful in any way?

A No, I don't—from the competitive standpoint of view, that increase in—apparent increase in concentration is not related to the elimination of competition in any relevant market. There is no inherent competitive effect—anti-competitive effect. I think it illustrates why statewide ratios are not meaningful.

THE COURT: The witness has heard the testimony previously—here on an exhibit, Government Exhibit, I don't know what number it is, that relates to the understanding, if you wish to call it that, between Seattle-First and N B of C, I believe, where [362] one makes an application to go into a smaller area and the other didn't know it, it found out later, and decides they won't apply. What is the witness' reaction to that so far as the anti-competitive effect, if any?

THE WITNESS: That does not mean—

MR. MOEN: There is not necessarily any evidence of collusion simply because—

THE WITNESS: I understand the question.

THE COURT: I know what your answer is going to be, but I want his answer.

THE WITNESS: That type of practice is not indicative of a lack of competitive vigor or a lack of rivalry. That is, if you have got an area that is only going to support one banking office, then whoever gets there first with his application is ordinarily the one that is going to get that branch from the supervisory authority anyway, and if you go in—if two banks come in with applications for the same—for an office in the same area, the supervisor is only going to grant one of them.

Okay, you could argue in front of the supervisor as to which of you was more able to do the job in that area, but he knows your organizations pretty well, and all it does is probably result in a bad feeling by putting the

supervisor on the spot, and you [363] have to choose between them.

Now, the point is that if there is only—you know, you are not going to be able to convince the supervisor to put in two banking offices in there, if you go in with two applications there is only going to be one, and the usual practice is whoever gets there first with their application, that's the one that gets approved.

So there is no point in putting in a second one in there.

Q (By Mr. Moen) Doctor, referring back to these concentration ratios in the State of Washington, how does the concentration ratio in Washington compare with the other nineteen states and the District of Columbia which authorize branch banking?

A To my recollection, the ratio for the two largest banks in the State of Washington, say the Seattle-First and the National Bank of Commerce, that that is about average for the states that permit statewide branch banking.

Q Do you know how they might compare, for example, with the State of Oregon?

A The State of Oregon?

Q Yes.

A It's below the ratio in the State of Oregon.

[364] Q How about the State of Idaho?

A Offhand, I don't know that figure. It's below—one state where I do have some personal knowledge is Arizona.

Q How about Arizona?

A Where I know that banking situation pretty well, and the two largest banks there have about 75 percent of the deposits in the state.

Q How about California, are you familiar with California?

A Very familiar with California having worked there for the largest bank, which has about 38% of the deposits in the State of California, and when you add in the second largest bank, I think it comes up to something very close to what Washington is.

Q Are you aware of any states on the Coast in the western area of the United States that have lower concentration ratios than the State of Washington?

A No, I am not familiar with any. I think that—you know, if these concentration ratios mean anything on a statewide basis, then you say, well, is banking in Washington more or less competitive than it is in Arizona. Well, it's pretty competitive in Arizona so you would expect it to be more competitive here. You expect it to be about as competitive here as you would in California, and it is very competitive in California. I from personal knowledge know that.

[365] Q Where these concentration ratios have been increased, has that resulted in a decrease in competition?

A You have had a couple of states—actually had several states in the United States that have had increases, fairly substantial increases in concentration in the last ten years. Virginia, for example, changed its banking laws in 1962 to permit statewide branch banking. It has had an increase in concentration.

Q What has been the effect on competition?

A It is a very competitive banking situation in Virginia. That is, as your statewide organizations developed, acquiring local banking organizations, local unit banks, they brought new competitive vigor to those local banking markets. They also increased the number of competitors in those markets. So that at the same time you had an increase in concentration ratios on a statewide basis, you clearly had in terms of performance a more competitive situation develop, so obviously it is more competitive in terms of banking practices in that state.

Q Do you have on your desk Plaintiff's Exhibit A-23?

A Yes.

Q. Would you like to comment on that exhibit with respect to the counties east of the Cascade Mountains?

A I was impressed with the number of banks competing in [366] each county in view of the fact that in many of the counties, the deposit potential is quite limited, but that in many of these instances, these are relatively small banking markets and yet you have as many banks competing as you do—for instance, there is one county, Ferry, in which you have only one banking office, that's the only one among these where you just have one banking office, but it has only—

THE COURT: It couldn't support two banks with 3,000 people?

THE WITNESS: No, and it only has 3.8 million in deposits, and I don't think another bank could make a go of it. That's my point.

Q (By Mr. Moen) My question is, would you increase competition by having another bank?

A You would probably drive one of them—you are going to have one bank there, I think that's about all it is going to support. And if you look through this list, you see there are five counties where there are two banks, and in those banks the deposit totals range from 11½ million to 34 million, and those are still limited banking markets in relation to the number of banks.

I think that is the point as you look at this exhibit, that these data suggest to me that these counties [367] are being pretty well served in terms of banking offices and the number of banks in relation to the potential that is there. Now, I think to characterize any of these markets as concentrated or highly concentrated is to ignore the fundamental principle of public policy that governs banking, and that is that entry is limited in such a way as to avoid failure but to provide enough banks to meet the public convenience and need. If you know, the number is consistent with what can be supported in the area.

Q In reducing concentration ratios in counties of that size, does this mean anything so far as competition is concerned?

A I don't think so. I think you can look at the situation in terms of what banks are there, how many in relation to the deposit potential. And I think one of the things you have here is that—well, let's take one of these markets such as Columbia—all right, where you have got—Columbia County, I characterize it as a market, it may or may not be, it's a county. You have got the National Bank of Commerce in there, the Seattle-First in there; the National Bank of Commerce has 7.2 million and the Seattle-First has 6.7 million. The alternative to having those two branches might be to have just one unit bank in there.

[368] All right, let's assume that even though you had two unit banks in there, as an alternative, one is 6 mil-

lion, one is 7 million, I don't think the public convenience and need would be as well served by having two small unit banks in there as having two branches of large banks that can provide a range of services, efficiency of services that small unit banks cannot. So I think that the public convenience and need is better served in that particular situation by having these two at each other and in that particular area.

Q Are you through with Exhibit A-23?

A Yes, sir.

Q I would like you to turn to Exhibit A-31. Would you like to comment on the meaningfulness of that exhibit?

A Well, this exhibit shows the share of county deposits held by the two largest banking organizations in the State of Washington on June 30, 1972. And that last column on the right, the share of county deposits held by the top two, gives the impression that perhaps these are concentrated markets in which you have dominance by these two leading banking organizations.

Now, let's look behind these figures a little bit. I have already mentioned one of these—well, let's go down the list here and look at the ones that have 100%, Columbia County. Well, I already dealt with [369] that one just a moment ago. We looked at A-23, we see that you know, there are 13 million dollars, not quite 14 million dollars in that county in two branches—one branch of N B C and one of the Seattle-First. That 100% doesn't mean anything unless you look behind it and say, now, is the public interest being better served by having two branches in these banks there than it would be some other way?

[370] Q Let's assume that these are independent unit banks, do you think that would serve the interests, the public interest any better?

A No, as I indicated, the unit banks would be small, their capability to do things would be limited. And that kind of situation—if we want to go back to this question of rivalry—if you have got two unit banks in a community, that might be more conducive to friendly rivalry than situations where you have, you know, banks being run on a statewide basis, much more impersonal basis.

Q Take a look at Pacific County, showing a ratio of 93.1 percent.

A Well, we could comment on some of these other 100 percent counties before we do that, but it all goes to the same point.

THE COURT: We have already talked about Ferry?

THE WITNESS: Yes.

THE COURT: That is the other 100 percent.

A (Continuing) But Pacific is less than one hundred, that involved three banks, as I remember, with total deposits of 29.6 million dollars in three banks. Pacific is one of the western counties, anyway, that is three banks, 29.6 million. Both Seattle-First and [371] the National Bank of Commerce are in there.

THE COURT: Is that Ilwaco?

MR. MOEN: Pacific County, yes, I think so.

MR. JOHNSTON: I think so, yes.

Q Take a look at Pende Orielle County.

A Well, I didn't finish on the other yet. I was waiting for the Court to find it.

THE COURT: Well, of course Ilwaco wouldn't be on here.

THE WITNESS: I think I can make the point without the exhibit, sir, and that is that that third bank in the county which has two million in deposits, or had two million in deposits at the time these exhibits were prepared, was established in October of 1971, according to Plaintiff's Exhibit A-41 which shows these new banks which were formed. In other words, it was in operation only eight months when these data were collected, so you have got to look behind these ratios.

MR. MOEN: I am still looking at Pacific County, is that Ocean Shores?

THE COURT: Ocean Shores is Grays Harbor County, isn't it?

MR. MOEN: Yes, I guess it is.

THE COURT: Pacific County I think is Ilwaco. [372]

MR. MOEN: We will have special evidence on that situation at Ocean Shores.

THE COURT: About Ocean Shores?

MR. MOEN: Yes.

THE COURT: All right, it is noon, and I take it that this would be an appropriate time to take our recess because Mr. Haywood is going to have to be back in any event. We will try to get him out of here today, I hope.

MR. MOEN: Oh, yes, I am about through with him. Of course it depends upon the cross-examination.

THE COURT: Well, he would probably like to leave, so we will manage to accommodate him. All right, court will be in recess and we will come back at 1:30.

(Noon recess)

[373] AFTERNOON SESSION
1:30 o'clock p.m.

DIRECT EXAMINATION
(continued)

BY MR. MOEN:

Q Dr. Haywood, in your analysis of this merger, have you given any consideration to the convenience and needs of the community to be served?

A I have reviewed of course the application made by the National Bank of Commerce, and the convenience and needs section of that application, and the decision by the Comptroller of the Currency. I have talked with officers of the National Bank of Commerce and the Washington Trust Bank to get a basis for making the evaluation of convenience and needs, yes.

Q And will you tell us what your conclusion is in that regard?

A I think that the convenience and needs of the Spokane market would be served in some significant ways. Washington Trust Bank, after the merger, that is, the resulting organization would be able to handle larger loans, would be able to provide more sophisticated lending services, that is one of the advantages of larger size, this greater degree of specialization in lending services, international banking services, [374] small business loans, greater availability of funds in the mortgage lending area than Washington Trust has done in the past. I

think there are some general and substantial ways in which the public convenience and needs would be served.

Q Now in conclusion, Doctor, I want to ask you, in arriving at the conclusions which you have testified to this morning, have you considered commercial banking to be the relevant line of commerce?

A Yes, sir, I have looked at this proposed merger in terms of commercial banking as a line of commerce. I would add that that doesn't mean that one shouldn't also look at some of the other competitors in trying to say whether a market is or is not competitive, but so far as the line of commerce, I have evaluated it in terms of commercial banking.

Q And have you considered the competition that might be offered by the so-called noncommercial banking industry, or thrift institutions?

A Yes, the two large Mutual Savings banks are certainly competitors in this market, but my conclusion is based on commercial banking as a line of commerce, the seven commercial banks in the area.

Q All right, and what is your conclusion as to the competitive effect of the merger? Would you just [375] summarize that for us please?

A I have two conclusions. One is that the wings effect is not applicable in this case, or if it is applicable at all it has a very, very weak influence. The reason being that N B C cannot be regarded as a likely potential entrant in this market, except by means that are rather devious, rather strained legally.

MR. TORRE: Objection, your Honor, to the word "legal".

THE COURT: You don't like that word legal from a professor, is that the idea, as contrasted to a lawyer? You had better not take any postgraduate economic courses at the University of Kentucky. All right, go ahead.

A (Continuing) In any event, the ways that have been suggested for N B C to get into this market are such that N B C cannot be regarded as a likely entrant by those people who are in the market, by those firms that are now in the market, and therefore I don't see that this threat, or possible threat of N B C coming in could have

any retraining influence upon these firms. So I say that the wings effect just isn't applicable in this case, and if it is it is of such small consequence that there is no significant anti-competitive effect involved.

[376] My second conclusion then has to do with the pro-competitive side, would you get a greater pro-competitive effect by N B C coming in through the acquisition of Washington Trust than by one of these other means? My conclusion is that you would get a much greater pro-competitive effect by N B C coming in through the acquisition of Washington Trust than through the other means that have been suggested.

Q Did you tell us what you believe to be the relevant banking market?

A I regard it as the Spokane metropolitan area, I believe the one that has been stipulated to.

MR. MOEN: I think, your Honor, that concludes my direct testimony of this witness, and I am wondering whether the Court has any questions. I think perhaps the intervenor might want to have a few questions.

THE COURT: Do you have any questions, Mr. Hartman?

MR. HARTMAN: I have just one question, your Honor.

THE COURT: All right, go ahead.

BY MR. HARTMAN:

Q Dr. Haywood, Dr. Smith testified as to certain conclusions he reached from the time sequence of four of the Plaintiffs' Exhibits, that is Exhibit B-2 was [377] a document dated 1951, B-3 was 1956, B-4 was 1962, and B-1 was 1968, and I ask you, Dr. Haywood, what conclusions can you draw from those dates?

A Well, I believe that Dr. Smith drew a conclusion that these showed a pattern of friendly rivalry, or suggested friendly rivalry, and the fact that you had four of them over such a long period of time seemed to be significant to Dr. Smith. My evaluation is this, first of all I would be very reluctant to try to interpret what any of their documents mean. I don't know the context in which they were written, the people who wrote them, the kind of things they may have meant by the terminology they used,

so I would be very reluctant to interpret them out of context. My second point is this, that if that is all that can be produced over a seventeen-year period to suggest friendly rivalry, I think it is a very insubstantial basis for this conclusion that was drawn.

[378] Q And this controlling is for the purpose of protecting the banks on the market, is that right?

A It is one of its purposes, to protect from overbanking and banking failures.

Q To protect it?

A Protect it, avoiding, well, to avoid the kind of thing that we had up until 1934.

Q Have there been any serious banking failures in this country since 1934 that were a result principally from overbanking?

A No, I think that there may have been some situations that bordered on that insofar, well, in some areas in the mid-'60s, but we went through the bank failures that have occurred certainly since World War II, we went through those bank failures and most of those have been due to internal problems in the bank. I wouldn't say it was overbanking as such but I think that suggests that the policy has been effective, that the FDIC has contributed a great deal of stability to the situation in the banking industry and the public is better off for it.

Q Well, assuming it is found there is a need and that they should permit entry; the entry will not result in any banking failure, in your opinion, isn't that true?

[379] A If you are assuming that the applicant meets various criteria such as, you know, capable management, and you assume that and so forth.

Q Well, assume that.

A Well, when there is a need and it is felt that a new bank is economically feasible and that it is needed in the area, then the regulator should grant it, but that's within his discretion, you know, to make this decision.

Q He takes into account then a lot of other things so

as to protect it from failure that he wouldn't normally do, in order to insure a permit for entry, is that it?

A Well, you're getting a little bit extreme.

Q Well, assuming capable management, profits and all those things being equal, if failures wouldn't occur from entry then entry should occur?

A I think that's a little extreme because in this case you could say, well, you know, we could put another bank in here, in a particular area, because it really wouldn't cause a failure of any bank.

It might mean that all of them would be less profitable or less viable than they were. You know, a fellow comes along and files an application and he decides to start another bank and not cause any of them to fail, but you know it is going to mean you are going to get closer and closer to that margin and somewhere [380] well, you've got to make a distinction. This is not a laboratory where you determine if there is enough or if they have enough, and you defeat the whole purpose of the policy.

Q Then you'd be looking perhaps to the profits of the banks in the market to protect them from entry, is that right?

A That is one of the things that has to be taken into account but, you know, I am sure that if the supervisor thought that an area was adequately served by existing banks in an area and that the public convenience and needs are being met—

Q (Interposing) In other words, then if there is no need for entry—

A Well, you know, need also is something that admits of various opinions. It is not a black or white proposition.

Q I assumed that, Dr. Haywood.

A Yes, if there is a need established, that there is a need to serve the public.

Q Yes. And then you say even then entry will occur if it will not result in failure?

A It probably would. I can't get inside of the head of the supervisor as to what he is doing to evaluate it, but I said in most cases it would.

Q Which bank in Spokane would fail if the N B of C entered [381] by foothold or entered de novo?

A I don't know.

Q Well, you said that, in your analysis for this testimony, that you looked into the competitive performance of these banks and you said that, well, they were competing and you knew that they were competitive and yet you don't know which one might fail if entry occurred?

A Well, really, no, I wouldn't know if any bank would fail or which one if one of them did fail.

Q So your investigation just didn't go through the strength of those banks there?

A I did not inquire into the likelihood of there being a—of having a bank failure in Spokane.

Q That does not affect the analysis in some way then?

A No.

Q Well, why doesn't it?

A I really don't know what you're trying to get at.

Q Well, you said that you analyzed the competitive environment of it and looked at the performance of those banks and you thought that it was a structurally competitive market and—

A (Interposing) Well, now, you involve yourself in a contradiction right there asking the question.

Q What?

A You said I looked at the performance and I said it [382] was a structurally competitive market and those are a part of the issues in this case, these sort of things. I said on the basis of structure as I looked at it, it was a structurally competitive market. But structure and performance are two different aspects.

Q I understand that. But which analysis did you perform, structural or—

A Well, my testimony was, I believe, that structurally I believe this to be a competitive market, I believe I said because you've got the first, third and fifth largest commercial bank operations in an area where you have seven banks and you've got two of the largest Mutual Savings and that that makes for a structurally competitive market.

Q If Spokane is a structurally competitive market what is a structurally non-competitive market?

A Well, if you had one bank in a market that might support more than one bank, or if you had two banks in an area that might support more than that—

Q Well, I ask you to take a look at Government Exhibit A-56 and I would direct your attention to the most recent time column which is to the far right column of June 30, 1972 and measures the distribution of market shares and demand deposits held by bank organizations in the Spokane metropolitan area. It [383] shows that the three largest banks in that market hold 92.8 per cent of the IPC demand deposits.

A The three largest banking organizations?

Q Yes, and the 92.8 per cent is a structurally competitive market, is that what you are saying?

A I am saying that on my analysis, in terms of the number and size of the competitors in this market, that it is structurally competitive. Now this is high concentration, a high concentration ratio, if you want to talk about the concentration ratios.

Q Well, aren't concentration ratios used to measure market power and competition?

A I believe I said that my view on that, and I think that it is reasonably well shared, is that concentration ratios defined for relevant market areas that we are talking about here are at best crude indicators of competitive conditions.

[384] You have got to look behind those concentration ratios to see what the market is, how many competitors are there, the sizes.

Q Isn't that what the concentration ratio shows, it shows you there are six competitors, banking organizations, and shows you their relevant size?

If you, say, look behind—do you mean you looked at the performance? But you didn't look at the performance, isn't that right?

A No, I mean that there are other aspects of structure than just concentration ratios. The number of competitors is a—as a matter of fact, the whole theory under which this—which this rests on doesn't say anything about concentration ratios, it talks about a number of competitors.

Q I'm sorry, the whole thing of potential competition has nothing to do with concentration, is that what you said?

A I didn't say anything about concentration ratios nor the theory.

Q Isn't it the theory of potential competition, as propounded by the government in this case and other cases, that potential competition is a significant factor in concentrated markets?

A Well now, you are talking about the government's theory.

Q Can you answer that question?

[385] THE COURT: Do you want him to tell you whether or not he thinks that is the government's theory or do you want him to tell you whether or not he thinks that is your—

MR. TORRE: His testimony is directed to rebutting our theory, and he said concentration has nothing to do with it.

THE WITNESS: I didn't say that about the Justice Department's approach. I was talking about economic theory in terms of how you explain the behavior in markets. Now let's address ourselves to the Justice Department's approach.

THE COURT: That's what you asked him. Go ahead.

THE WITNESS: The potential competition argument as propounded by the Justice Department is exemplified in several propositions which, I think you know, I have set forth in an interpretation of this in the book you have got on your rostrum there.

Q Is one of those factors concentration in the relevant market?

A Right, highly concentrated markets—

Q Well,—

THE COURT: Let him finish, Counsel, he can't talk when you are talking and I can't hear both of you unless you just want to talk back and forth and then I [386] will wait until you are through, then we will go ahead orderly.

MR. TORRE: When he paused, I thought he stopped.

THE COURT: No, he didn't stop.

THE WITNESS: I am just catching my breath.

THE COURT: All right, go ahead.

THE WITNESS: As I recall the proposition, it runs like this, that highly concentrated markets tend to be

imperfectly competitive, that the presence of significant potential entrants tends to mitigate imperfectly competitive behavior. Those are two of the propositions to the government's approach to this.

Q (By Mr. Torre) Well, you said concentration ratios are crude indicators of competition; are there any better indicators?

A Yes, I think that one can look at the number of competitors in the market and—you know, if you have four or five or six competitors in the market, that is certainly going to be a more competitive situation than if you just have maybe one or two. Now, the concentration ratio has to be interpreted in terms of how many competitors there are. It itself doesn't tell you how many competitors there are in the market, it just tells you what share is held by either the largest or the second [387] largest, or what have you, and as a matter of fact, it is my point that the economic theory that underpins some of these arguments really doesn't say anything about concentration ratios. It talks in terms of number of competitors.

How do you define a perfectly competitive market? In theory it is a market that has so many competitors, a large number of very small competitors, right?

Q It's your cross-examination, I will agree with that, I believe that's true.

A I believe that is what Dr. Smith implied or may have said.

Q All right. And at the opposite end of that would be monopoly, is that correct?

A With one competitor.

Q So, therefore, we have a continual line, a spectrum?

A Various market—

Q Perfect competition, most imperfect competition, monopoly?

THE COURT: I think I would like to hear what perfect competition is. I get the feeling that perfect competition is when people are competing in an area where the margin is so low that the public is getting great benefit, but anybody might go broke at any time, that is what it sounds like to me.

THE WITNESS: That is, I would say, a very good [388] statement of it, because it is—it is a theoretical model, a theoretical concept where you have large numbers of small competitors that are just breaking even, so to speak, or earning a normal rate of profit. You put one more firm in that market without an increase in demand, somebody is going to go broke.

THE COURT: In other words, perfect competition means that you keep having somebody go broke, keep the competition alive, a new entry and that type of thing, is that the idea?

THE WITNESS: Yes, sir, it's in the same concept as a limit—a notion of a limit in mathematics, such as infinity is a limit, you know, you approach it but you never quite get there.

Q (By Mr. Torre) Would you agree with this statement in Modern Economic Theory, "An industry is said to be competitive or, more precisely, purely competitive only when the number of firms selling homogenous commodities is so large and each individual firm's share of the market so small that no individual firm finds itself able to influence the commodity's price significantly by varying the quantity of output itself."

MR. MOEN: Your Honor, I think he should identify the literature from which he is reading.

THE COURT: Who wrote it and so forth, maybe [389] that will help him. When you read something from a book, you first have to ask him if he is familiar with the teaching.

MR. TORRE: I am sure Professor Haywood recognizes the name of Frederick M. Shearer.

THE WITNESS: It's a standard textbook definition of perfect competition which you just read.

Q (By Mr. Torre) And there is nothing mentioned in there about failure of firms there?

A No, but that is a clear implication of that. Now, if you want to go back to the economist who set forth this approach, Alfred Marshall back in the 1900's, it is very clearly set forth in Marshall's Principles.

Q Well, let's talk about Professor Shearer who wrote it in 1972.

A It really hasn't changed in the last one hundred years.

Q That's right, and it just says, "Each firm in a perfectly competitive market, the market share is so small that no individual firm finds itself able to influence the price."

A That's right.

THE COURT: Well, then, I would gather from that —let's see if I get the significance of that. I would gather from that then that if we had about twenty banks in the Spokane area and you cut up all the [390] pie so each one of them had about 3 million in deposits, maybe you could operate a bank on that, I don't know, but it would be right on the ragged edge, that that would be the real ultimate in perfect competition, is that the idea? Is that what I gather from that?

MR. TORRE: Well, theoretically, yes, your Honor, but we have to take into consideration the economies of scale, what the market will hold.

THE COURT: I understand, but I mean if you just take all of these and divide it by 20, for example, all the money they have and just have twenty banks—

MR. TORRE: One hundred widget salesmen would be more competitive than two widget salesmen.

THE COURT: You can put them all on the ragged edge because the overhead of the bank in a small demand deposit would eat up any profit, wouldn't it? Isn't that also true?

MR. TORRE: That's right.

THE WITNESS: You know, we had this kind of situation. We had free entry—virtually free entry—into banking in this country—

THE COURT: I am asking him to go ahead. I don't know about this, I probably flunked econ, so go ahead, tell me what you are going to say.

THE WITNESS: After the passage of the National [391] Banking Act in 1863, we had both at the national level and at the state level what was known as a free banking policy. That is, if anyone who got—could get together the minimum amount of capital that was required by law and could prove that they weren't rascals, they could get a bank charter.

Now, we had a lot of chartering of banks, particularly in the 1880's up to the 1920's. Even Elks Clubs had banks, churches had banks attached to them. We had 30,000 banks in this country in 1920, over 30,000 banks. Now, in 1934 after the FDIC got into operation, we had the bank holiday and everything, we had only 15,000 banks. We went through a great period of free entry and free competition in banking up to 1933.

Now, the witness the other day, Mr. Smith, suggested that the cause of bank failures in the '30's was the failure of monetary policy. I disagree with that. We had 800 banks fail on the average each year between 1921 and 1929 in this country. There wasn't anything—any problem about monetary policy then, it was just overbanking. We had far too many banks, this caused great public distress.

THE COURT: All right, go ahead.

[392] Q Would you agree with the term that pure monopolists, oligopolists, and monopolistic competitors share common characteristics each recognizing that its decisions have a perceptible influence on price, or in other words, that each can increase the quantity output it sells under a given demand condition only by reducing its price?

A Monopolist does.

Q Let me start at the extremes, where the perfect competitor has no influence on price, and the monopolist does. Now concentration ratios are a way of measuring this bend between perfect competition and monopoly, is that right?

A They are one measure of structure.

THE COURT: Let me ask you a question here while I am thinking about it. I always seem to get in trouble by asking questions, but I am going to get into more, I guess. When you have a Federal Reserve Board, and I guess we have one, these banks just aren't free to do what they want to do, so far as kicking money around, are they?

A No, sir, banking is a very regulated industry.

THE COURT: And the Federal Reserve Board makes the decision regarding interest, and that has a definite effect on Bank of America, the largest, does [393] it not?

THE WITNESS: Yes, sir, when the Federal Reserve, through its monetary policy, causes interest rates to rise in the market, or to decline, it definitely has an impact on bank operations, it is designed to have an impact on them.

Q What does that have to do with monopoly, if anything?

A It complicates the analysis in this industry. This is a very complex industry in terms of structure.

THE COURT: All right, go ahead.

Q In that connection, I noticed in your monograph that you cited the Supreme Court decision in the Philadelphia National Bank case. I assume that you are familiar with the statements contained therein?

A Generally, yes.

Q Do you recall the statement that says "we reject the position that commercial banking, because it is subject to a high degree of governmental regulation, and because it deals in the intangibles of credits and services, rather than in the manufacture or sale of commodities, is somehow immune from the anti-competitive effect of undue concentration?"

A Yes, I recall that.

Q Do you agree or disagree with that?

A I agree with the Court's decision that banking is not [394] exempt from the antitrust laws.

MR. TORRE: Could you read back the answer please?

THE COURT: Well, he said I agree with the Court's decision, that banking is not exempt from the antitrust laws. That is verbatim.

MR. TORRE: Well, that wasn't the statement that was made.

THE WITNESS: Oh, I am sorry. I misinterpreted it.

Q It says "we reject the position that commercial banking, because it is subject to a high degree of governmental regulation, and because it deals with the intangibles of credit and services, rather than in the manufacture or sale of commodities, is somehow immune from the anti-competitive effects upon undue concentration."

THE COURT: I don't get the point that you are making, counsel, by repeating what you have stated there,

that statement out of the case. He said he agrees with the Court that banks are not immune from the antitrust laws.

MR. TORRE: No, it doesn't say antitrust laws, your Honor, it says "immune from the anti-competitive effects of undue concentration."

A Yes, I believe that bank mergers and acquisitions can [395] have anti-competitive effects, that there can be, and have been mergers that are anti-competitive.

Q And you would agree with this statement that there is no reason that concentration is less inimicable to free play of competition in banking than in other service industries, on the contrary it is in all probability more inimicable?

A I think I understand what you mean.

Q I am getting a little tongue-tied.

A Concentration has become one of those words to which you attach different meanings. When you say concentration—

MR. TORRE: Your Honor, could I have the witness answer the question?

THE COURT: I am asking him to go ahead. Now you let him go ahead and answer that question because it needs a little explanation. You want him to say "I agree," but I am the one who is supposed to make the decision and I want to understand what he is talking about. I need to understand this, I don't catch on as quickly as you do, perhaps. All right, go ahead and explain it.

A Concentration has various meanings, or it can be measured in various ways. Now the word concentration cannot be equated as being synonymous with concentration [396] ratio. Concentration ratio is one measure of concentration. There are other aspects of concentration, as I have said before, the number of competitors, and so forth and so on in a relevant market area. Now the way I interpret concentration in that context is that it meant concentration in a broad sense, not just concentration ratio.

Q Well, is that the way the Supreme Court used it in that decision?

MR. MOEN: Well, I am going to object to that. How would he know what they meant?

MR. TORRE: Well, he cited it as an authority in his monograph.

A In the Philadelphia case you are dealing—the case dealt with a merger of direct competitors. You could use concentration ratio as an indicator of anti-competitive effect in that case. I think I made that clear this morning, that where there is a merger of direct competitors there is an inherent anti-competitive effect, and whether you are talking about the concentration ratio of 30 percent, 40 percent, or 50 percent or whatever level, you are putting together two banks that are going to raise that concentration ratio above what it otherwise would have been, and there the increase in concentration ratio is a clear indicator [397] of an inherent anti-competitive effect.

Q Increase of the concentration ratio, is that right?

A In other words, it indicates an anti-competitive effect, you know, it is inherent.

Q You said that concentration could also relate to the number of firms, is that correct?

A Yes.

Q But in measuring concentration of direct competitors, we use concentration ratios, is that right?

A That is one measure. There are various kinds—

Q Well, what are some of the other measures?

A Well, there is what is called the Lorenz curve, and if we had a blackboard in here I would draw you one to illustrate it. There is what is called the Gini coefficient.

Q Did you run a Gini coefficient off of the Lorenz curve?

A What?

Q Did you run a Gini coefficient off the Lorenz curve?

A No, I didn't, I looked, as I have said, I looked at the number of competitors, the fact that you have three very large banking organizations, commercial banking organizations competing.

Q Did you establish what the Herfindahl index would be?

A No, I made no calculations of any of these. But then that is my point, nobody else has either in this case.

[398] Q You said that concentration ratios were crude, and that there were others, yet you didn't even bother to

use the others, you just relied on the concentration ratio, is that right?

A I didn't rely on the concentration ratio. I looked at the number of competitors, the relative size, the strength of these banking organizations—

Q Well, how did you measure relative size?

A By your Exhibit A-1 or A-2, in terms of the amount of deposits they had.

Q Well, how did you compare them to one another?

A Well, I have been involved in the banking business for a number of years, and I think on the basis of my knowledge of the various markets, that I have some basis for drawing an opinion.

Q Then, you used a subjective evaluation?

A I drew them based on my experience, and if that is subjective, yes.

Q What authority in economic theory or literature is there for using a subjective evaluation of concentration instead of a concentration ratio?

A What do you mean, what authority is there?

Q Well, what is your foundation for using that approach rather than using the concentrated ratio?

THE COURT: You mean using experience, you [399] mean the textbook doesn't say that you have to have some common sense or experience, something like that?

MR. TORRE: Well, when you are dealing with concentration, we are talking about numbers and—

A Well, I think most analysists and economists who have dealt in this area and have written in this area say that you need to look at performance in an area. I mean one of my professors at Berkeley was David Alhadaff who was one of the first economists to apply market structure analysis to national banking. I think if you will look at what Alhadaff wrote about California banking in the mid-fifties, you know, he looked at performance.

MR. TORRE: I know Alhadaff, I had lunch with him.

THE WITNESS: He was on my examining committee at Berkeley.

MR. TORRE: He is a fine gentleman.

Q (By Mr. Torre) What would you say the competitive effect of a merger, referring to Government Exhibit No. A-56, the competitive effect of a merger between American Commercial and Farmers and Merchants would be?

A Well, American Commercial, according to this exhibit, has 2.3 percent of the IPC demand deposits in Spokane. Farmers and Merchants Bank has 2.6 percent of the [400] IPC demand deposit, so that together they would have 4.9 percent. Is that what you are asking?

Q Yes. And how would you measure the anti-competitive effect of a merger between the Washington Trust Bank and the Old National Bank?

A Well, I didn't finish answering that other question, may I go ahead?

THE COURT: Well, that is right, he hasn't. You asked him what the competitive effect of those two banks were in the market over there and he hasn't said yet.

MR. TORRE: I am sorry, he threw me off by asking me a question.

A Now I think that under some circumstances,—well, I think that a merger of those two would have this inherent anti-competitive effect that you get whenever you merge two direct competitors. Then the question would be beyond that, would the resulting organization be a more able competitor in this market, might there be pro-competitive effects that would flow from such a merger that would offset, more than offset the anti-competitive effect of the direct merger.

[401] Q But there is an inherent anti-competitive effect in the merger of existing competitors, is that right?

A There is an inherent anti-competitive effect, yes, but my analysis would have to go further into some detail about performance in such a case.

Q Are you finished?

A Yes.

Q Well, would there be any anti-competitive effect if the Old National Bank and the Washington Trust Bank merged?

A The Old National and Washington Trust Bank—yes, there would be an inherent anti-competitive effect.

Q Would it be greater or lesser than the American Commercial and the Farmers and Merchants?

A Much greater.

Q In what terms?

A Because these two banks are two of the larger banks and they are obviously competing across a broad front and therefore the degree of competition that would be eliminated by a merger would be very substantial.

Q How do you measure that?

A I would measure it one way by the concentration ratio and in this case, in this case, as I have said, the concentration ratio is a pretty reliable indicator, of this inherent anti-competitive effect in the merger of [402] direct competitors.

Q So therefore the difference between the concentration ratios indicates the degree of anti-competitive effect, is that correct?

A When you're talking about merging two banks and eliminating direct competition, yes.

Q You also considered in reaching your conclusion the number of firms that were in that market?

A Yes.

Q So that part of it in determining your concentration ratio was rather meaningless unless you have the number of bank organizations in mind, is that correct?

A Yes.

Q An inherent part of that, I was going to say. So, therefore, if a high degree of concentration indicates a greater competitive or anti-competitive effect than a low degree of concentration, therefore there must be something wrong with high concentration; is that right?

A Well, that doesn't follow from what I have been saying here. We've been talking about combining two banks and whether the concentration ratio, whether the change in the concentration ratio is a reliable indicator of the anti-competitive effect, and I'll go that far, in fact I insist upon that point of view, that the concentration ratio, as well as other measures, that it is a [403] sufficiently reliable measure of the anti-competitive ef-

fect when you're talking about the merger of direct competitors.

Now, it does not follow from that that a market with say 90% of the deposits held by the three largest banks is more or less competitive than a market where the three largest banks might hold 50 or 60 percent, that doesn't, you can't draw—

Q (Interposing) But it doesn't follow that the post-merger situation where there is an increase resulting in increased concentration is less competitive than the pre-merger situation, isn't that right?

A I hate to be so precise about terminology because I guess academicians are that way, maybe it's—and I think it clarifies—

THE COURT: Well, I'll tell you what I think you could do that will help you. If you don't agree with what he says, just say "No" and then he'll say, "Why don't you think so." I think that's what he'll do; I hope.

MR. TORRE: Yes, that would facilitate it.

THE COURT: Now, he wants you to agree with something and this is common, its been done long before you came here and it will be done a long time afterwards. Lawyers try to get you to agree to something by saying, "Isn't [404] that right what I said?" And then the thing for you to do if you don't agree with them is to say "No." Then if wants to ask you why, just let him ask you why.

THE WITNESS: I don't think he wants to ask me why.

THE COURT: It disturbes him when you answer, he likes yes or no answers. Lawyers want yes or no answers.

MR. TORRE: I don't mind the explanations afterwards.

THE COURT: Well, that's all right. Just say yes or no and that will make him happy and that will expedite this.

Now I've got a real problem. An old golfing enemy just walked in a few minutes ago and I've really got to conduct this in a different style. All right.

Q (By Mr. Torre) If the situation results in an increase in competition in the merger of two firms resulting in the concentration—excuse me,—and for example the W T B with the O N B was the example we did use,—you concluded that that would be inherently anti-competitive. Does it follow that the market was more competitive before the merger than after the merger?

THE COURT: It's hard to give yes or no answers to things like that, but—

[405] THE WITNESS: Yes, sir. If it follows that the market was more competitive before the merger than after?

MR. TORRE: Well, if the merger was anti-competitive.

THE WITNESS: I'd like to give a yes or no answer.

THE COURT: Just say it.

THE WITNESS: No, sir, it does not follow.

THE COURT: That's the first thing. Then you can explain it.

Q (By Mr. Torre) Would you explain that? I'd like to hear that.

THE COURT: So would I. Go ahead.

A We are talking about first this inherent competitive effect in eliminating competition. Now it may be that the resulting bank organization from this merger is going to have a greater capability and realize greater economies of scale and have larger loan limits and can therefore be more competitive with other banks in the area than it was before, so you get two effects in a direct merger.

You get the inherent anti-competitive effect and you get this pro-competitive effect which involves an assessment of what the performance is vis-a-vis after [407] the merger and vis-a-vis before the merger.

Q Then looking at the performance analysis?

A I think you've got to go to performance analysis to get the whole story.

THE COURT: Well, you asked him whether or not—

MR. TORRE: (Interposing) Well, you said that you didn't perform—have a performance analysis in this market.

THE WITNESS: That's right.

Q (By Mr. Torre) So you'd have to go to the performance analysis to get the whole story but—

THE COURT: Now here, let's get this straight, Counsel. First of all you start with the premise of merger of the Washington Trust Bank with the Old National Bank, that is not before me. You start with the premise of a greater concentration by the merger of those two banks, is that right, isn't that right, isn't that your premise? Then you say, "Will that greater concentration in and of itself because of the merger of the two competitive banks, in economic theory and in practice have an anti-competitive effect," and he said, "Yes, it would have an inherent anti-competitive effect." Then he says further that—however, that it is not all anti-competitive, he says, whether or not he's right or wrong, he said it, he says [408] that you've got to go further than that; he says you've got to find out whether or not by virtue of the merger there is a pro-competitive effect in that Old National Bank—Washington Trust Bank merger to give them greater loan capacity so that, instead of Seattle-First, they might go to the new merger because now their loan ratio was higher and they can loan money. Now that's what he is trying to tell me, is that it?

THE WITNESS: Yes, sir, there's a change in the behavior—in the performance of the market.

THE COURT: He doesn't have to explain to me that when you have more assets in the bank you have a higher loan capacity, I already know that.

MR. TORRE: And more power, is that correct?

THE COURT: Well, you have more loan capacity, therefore you can be more competitive with the larger industrial accounts that need lots of money. Isn't that what you're telling me?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q (By Mr. Torre) Does an increase in size of the merged firm mean that it has stronger competitive effect in the market?

A It may, yes. It's a question of probability when you're looking at a merger like that.

[409] Q You said that you'd have to consider performance characteristics, is that correct, and balance the two together?

A You have to make an assessment of what would be the likely performance after the merger.

Q Do you look at the performance pre-merger?

A Yes.

Q Did you look at the performance of the banks in Spokane?

A No, sir.

Q Did you look at the performance of the banks in Spokane?

A No sir.

Q But you did go to Spokane as I understand it, isn't that so?

A Yes. I talked—

[410] I talked with officers of the National Bank of Commerce, I talked with Washington Trust Bank, but I have not made an investigation of the competitive practices in the Spokane area.

THE COURT: Let me ask you a question, counsel, what if he went to the people at the Seattle-First over there and said, "Mr. So and So," whoever is running the Seattle-First show, "Are you competitive with the other banks here?"

Wouldn't that be kind of a ridiculous thing to ask him?

MR. TORRE: Yes, it would be.

THE COURT: Why then, what are you talking about, investigation?

MR. TORRE: That isn't what I asked, I asked about performance analysis, the precise term in economics.

THE COURT: I understand it is a precise term, but you asked him whether or not they were competitive, that's what you asked him, didn't you?

MR. TORRE: No, I didn't.

THE COURT: Did you understand him to ask you that?

MR. TORRE: I asked him about the economic performance analysis of the market, not whether or not [411] he asked them whether they were competitive.

THE WITNESS: I think I understand what he is asking.

THE COURT: I understand what he is asking now, I suppose that—go ahead.

THE WITNESS: I have answered, I did not make an analysis of performance. I made my assessment on structural aspects of the market as I viewed them, and that is—I think that is the same basis that Dr. Smith made his analysis on.

THE COURT: Tell me, how would you find a performance analysis by the Seattle-First in the Spokane market?

THE WITNESS: Do you mean how would I go about making such a study?

THE COURT: Yes.

THE WITNESS: I have done this before in some other instances, and one thing, you go around, you talk to business people about how well their banking needs are being served, you get information on loan rates and service charges and in general collect the information about how the banks had conducted themselves. It is certainly not a perfect analysis, I mean it's a difficult kind of an analysis to do, but it is done. But my testimony has been limited to my assessment of [412] the structural aspects, and I think you can make some sound judgments—reasonably sound judgments on that basis.

If you want in your hypothetical situation Old National and Washington Trust as possible merger partners, I would say, as I said before, there is an inherent anti-competitive effect, and furthermore, I would say that that would be so anti-competitive that it is unlikely that there would be a change in—likely that you would have no pro-competitive effect to offset it in this particular market, if we want to talk about that hypothetical situation. And I think most any analyst would give you that answer based on the structural facts before them.

Q You say there would not likely be pro-competitive effects?

A That would be sufficient to offset the inherent anti-competitive effect in taking two of the three largest banks.

Q Based on—

A Just structural.

Q Just structural?

A Yes.

Q In other words, you would say there would be pro-competitive performance based on structural analysts, isn't that a contradiction of terms?

[413] A No, no, you can expect the—

THE COURT: We have sure kicked this old dog around a long time. Let's go to another question. I have heard it, I am sure I am familiar with it.

MR. TORRE: I have just a few more questions, then I will be through.

THE COURT: All right.

Q (By Mr. Torre) You made a statement in your direct this morning that the National Bank of Commerce would not be inhibited by being unable to branch in Spokane after acquiring the Washington Trust Bank, is that correct, and if not, what did you say?

A I didn't say—I don't believe I said inhibited, I said that the inability to branch would not be a significant weakness, that is, there are other ways.

Q Would it be a weakness?

A I don't think in this market that it is—yes, it is a weakness, it would be a weakness, but it is not a significant weakness in this particular market.

Q How would it offset that weakness?

A It would offset it by being more competitive in other ways, by maybe doing more advertising, by—

Q Price competition?

A Price competition.

Q Offering lower service charges?

[414] A Yes.

THE COURT: Does Washington Trust have some branches over there?

THE WITNESS: Yes, sir, they have seven—eight offices altogether; right?

MR. TORRE: Eight total offices.

MR. MOEN: One main banking office and seven branches.

THE WITNESS: That is a pretty adequate base.

THE COURT: For Spokane I think that is a pretty fair amount of branches, isn't it?

Q (By Mr. Torre) But as soon as Spokane grows geographically, expands, the city grows, then it would be a disadvantage to N B C to be unable to branch?

A It would be a disadvantage. I think it can be readily made up—offset in other ways and ways that may be even more competitive than branching.

THE COURT: Do you mean there would be a new area around Spokane somewhere that would spring up?

MR. TORRE: If the city has grown over the past year, it has grown to the east into the—

THE COURT: You are talking about the Spokane Valley out there, Dishman and the central valley; I know about those.

MR. TORRE: Yes.

[415] THE COURT: They are already out there, aren't they?

MR. TORRE: They could keep going.

THE COURT: Do you mean it could keep going but not too far because that's awfully close to the Idaho line once you get out there.

MR. TORRE: We could have a twin cities of Coeur d'Alene and Spokane, we could call it the Inland Empire Megopolis.

THE COURT: All right. Go ahead.

Q (By Mr. Torre) Couldn't N B C engage in the same price competition via foothold?

A It could, it would have to—well, it could, yes.

Q And since price competition is pro-competitive, wouldn't such a foot—couldn't such a foothold acquisition be pro-competitive?

A A foothold acquisition would have some pro-competitive effect. I think I have indicated that, yes.

Q What anti-competitive factors would result from de novo or foothold entry by N B C in Spokane?

A Well, again any way that N B C goes in here eliminates it from the wings, you know, so if there is anti-competitive behavior in this market now or less than adequate behavior, any way N B C goes in, you have lost your competitor standing in the wings, right?

[416] THE COURT: Don't say "right" to him.

Q (By Mr. Torre) Yes, I will agree to that.

A So you have that—I have said, I think, that is an inconsequential aspect of this case. So I say that if N B C went in by foothold or de novo, that there would

be little or no anti-competitive effect. Whatever there was would be related to the wings effect.

Q There is a wings effect of some sort then?

A Theoretically. In practice in this case, I think it is, as I have said, it is either nill or very close to it.

Q Theoretically because the firms in the market feel the threat of possible entry, is that right?

A I don't think they feel the threat of possible entry.

Q Theoretically?

A Yes, that's the wings theory as it is part of the goverenment's potential competition theory.

Q Assuming N B C's entry is possible, how do the firms in the market identify potential entrants?

A Assuming—that kind of assumes the thing away.

THE COURT: I don't understand your question, but maybe he does. How do they identify the potential entrant?

MR. TORRE: How do firms in the market identify potential entrants into their market.

THE COURT: What do you mean by identify, [417] counsel?

MR. TORRE: Well, he stated that there was minimal wings effect because there wasn't much awareness.

Q (By Mr. Torre) Isn't that correct?

A Yes, okay, that's close enough.

Q I would rather you state it than me.

THE COURT: I think that is close enough to what he said, he says minimal effect.

Q (By Mr. Torre) Minimal because of awareness, is that correct?

A Okay.

THE COURT: Minimal because of awareness? They are aware of the existence of N B C but they are not too much worried about the way they come in because if they came in de novo or via foothold, that is what he said.

THE WITNESS: That's correct.

THE COURT: They are not too much concerned about that.

Q (By Mr. Torre) You said N B C could engage in price competition via foothold, is that correct?

A Yes.

Q And if they could do that, shouldn't the firms be aware of its consequences?

[418] A I don't think that they are. The prospect that N B C would enter is very much complicated by the devious means by which entry would have to be made.

THE COURT: Let's get down to specifics, let's talk about price, do you mean free checking accounts?

MR. TORRE: Free checking accounts.

THE COURT: For anybody who has over a five-dollar deposit?

MR. TORRE: Or higher interest rates on certificates of deposit.

THE COURT: Do you mean higher time certificates, higher interest rates, if they paid five and a quarter rather than five, that type of thing?

MR. TORRE: Right.

THE WITNESS: They are limited by law in that area by Regulation Q, of course. They cannot be over certain rates on—

MR. TORRE: Compensating balance requirements, that would be a significant factor.

THE COURT: Let me ask you a question in that connection, in your experience—and I think you have had some,—have all of the depositors from one institution rushed to the other one when they first heard about the fact that somebody was going to pay a quarter [419] or a half percent or something like that?

THE WITNESS: No, sir, there is a good deal of inconvenience to changing banking affiliations, and if there is, you know, a quarter of a percent, that might have absolutely no effect, a half percent might have a little bit, three-quarters might have more, you know.

THE COURT: I understand that.

THE WITNESS: In California we used to think—

THE COURT: I have my opinion already. I'm just asking you for yours. My opinion, if it's worth anything, is that when people have established a banking connection, they are very reluctant to change, that is for the record; true?

THE WITNESS: Yes, sir, there is a good deal more

to banking than just the pricing of services. There is customer affiliation, service to the customer.

THE COURT: This is off the record.

(Discussion off the record.)

Q (By Mr. Torre) Are you aware of the Pittsburg free checking account price war that was taking place?

A Not in any detail. I was aware there was something going on, I couldn't say anything about that.

Q You testified in a case in Virginia, is that correct?

A Yes.

[420] Q You are familiar with the banking in the State of Virginia?

A Yes.

Q Are you aware that small banks in Virginia, what we call the foothold, have started offering free checking accounts and that eventually all the firms in northern Virginia offered free checking?

A I don't remember who kicked it off in northern Virginia.

Q It was Commonwealth National Bank, does that perhaps ring a bell?

A Do you mean one of the banks in the Commonwealth?

Q No, that's the title of the bank that was eventually acquired by Virginia National Bank.

A I don't remember that.

Q In any case, could you describe a situation in which a merger might result in a substantial lessening of potential competition?

A Yes, I think that the Federal Reserve has denied some applications where I would agree that there was—would have been a substantial lessening of potential competition. I don't like to comment on specific cases that come before it, that's the extent of my experience.

Q What would be the circumstances of such an anti-competitive effect?

A May I just avoid names of banks?

[421] Q Well yes, just construct a hypothetical, if you will.

A One case that I—where you had a large—relatively

large bank holding company in a state headquartered in a major metropolitan area, it acquired a rather large bank, I believe around $200,000,000 in deposits, in the same branching district that the holding company was located in. In other words, they didn't need to go in there and acquire a bank through a holding company acquisition, they could have merged it right into the bank that they had in this major area because they were just—I don't know, they were within maybe 20, 30 miles apart at the most and not only could they have merged it by branching but they could have branched into areas around the place where this other bank was located. Now, I think that is—

Q In other words, the potential entry could occur just getting into the fringe of that bank market, is that right?

A It was only 20 miles from the lead bank in the holding company, and it's in the same branching district and there was no restriction on de novo branching except in the head office city where this was located.

Q Is entry the only difference you are making with regard to the loss of potential competition?

A No, no, I think if you are acquiring the largest bank [422] in an area and where it is clearly the dominant bank and where that acquisition will result in dominance, even increasing dominance, I think that is the kind of merging acquisition that should be permitted to happen.

Q With regard to your comparison of concentration in the State of Washington, of concentration in Oregon, and especially California, California has statewide branch banking, is that correct?

A Yes.

Q So that would have to be taken into consideration in measuring the difference in the statewide concentration, isn't that right?

A Yes.

Q And the comparisons are rather misleading because if the average height of people that are over six feet is over six feet, that dosen't make a six-foot person short, does it?

A Would you run that by me again?

Q If the average height of people over six feet is more than six feet, that doesn't make a six-foot person short, does it?

THE COURT: That is an interesting question, counsel.

A I would say it does make him short if the average height is above six feet.

[423] THE COURT: Yes, it does.

MR. TORRE: I was talking about people being over six feet.

So, therefore, the fact that Washington is slightly less concentrated than these other states is not very meaningful?

A I would say you are right, the concentration ratio doesn't tell you much at all.

Q It doesn't mean it is not concentrated, does it?

A It doesn't tell you anything about competitive performance on a statewide basis.

Q But it doesn't mean that Washington isn't concentrated because it is less than these other ones, does it?

A I am not sure I understand.

THE COURT: What he is asking is, for whatever it is worth, just because Washington has a lesser concentration of banks in the State of Washington than California, that doesn't mean that Washington isn't concentrated?

THE WITNESS: I would agree with that.

THE COURT: I agree with that too. Washington could be very highly concentrated and just be a little bit less than other states that are more highly concentrated, that's the point he is trying to make. Isn't that right?

THE WITNESS: Right.

[424] MR. TORRE: No more questions.

THE COURT: Mr. Moen, do you have any redirect? Hopefully not.

MR. MOEN: Could I have a minute to talk to my co-counsel?

THE COURT: Yes.

(Brief pause)

MR. MOEN: No redirect, your Honor.

THE COURT: Does the intervenor have some questions?

MR. HARTMAN: No questions, your Honor.

THE COURT: All right then, the witness can be excused, and I guess permanently unless you want him to stay.

MR. MOEN: No, I would like for the witness to be permanently excused.

THE COURT: All right. Is there any objection to me permanently excusing him, counsel?

MR. TORRE: No, your Honor.

THE COURT: All right, you are at liberty to leave and return to Kentucky.

THE WITNESS: Thank you, sir.

(Witness excused)

MR. MOEN: Call Dr. Billings.

THE COURT: After we go through his [425] qualifications, I think we will have the afternoon recess.

## LLOYD C. BILLINGS,

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. MOEN:

Q Please state your name.

A Lloyd C. Billings.

Q Your residence address?

A 483 Annie Place, Cheney.

Q And your occupation?

A I'm associate professor at Eastern Washington State College.

Q And what subjects do you teach?

A I teach money and banking, financial management, business research methods occasionally and statistics occasionally.

Q How long have you lived at Cheney?

A I have lived there since 1969.

MR. MOEN: I think that's my qualifications, your Honor.

THE COURT: Do you want to ask him anything [426] further?

MR. HOFFMAN: I think that anything along those lines I will save for my cross-examination.

THE COURT: All right. I think I will let you go ahead for a little bit, we were a little late getting started.

MR. TORRE: Can we have him state what he is qualified as an expert in?

Q (By Mr. Moen) Tell us again what subjects you teach.

THE COURT: He says he teaches money and banking, statistics, and related courses, I think.

THE WITNESS: Yes, financial management.

THE COURT: Financial management at Eastern Washington State, which people take towards a degree, a BA degree with a major in economics or something of that sort?

THE WITNESS: Or Business Administration, sir.

THE COURT: BA?

THE WITNESS: Yes, sir.

MR. TORRE: Your Honor, he should be qualified as an expert in some field. I mean teaching these courses is fine, and I assume he does, but he should be an expert in something so we know what he can give opinions on.

THE COURT: He is an expert in teaching maybe, [427] that's what the other professors were, that's what they were doing for a living, I guess, and he teaches in a certain field. So I take it that he has expertise so far as teaching economics and teaching money and banking and that type of thing. Isn't that right?

Q (By Mr. Moen) Do you also do work in the field of research?

A Yes. Right now I have just been appointed editor in chief of the Bureau of Business Research Publication forthcoming. We are just starting the publication, and we have just established recently a Bureau of Business Research. Yes, I have had some experience in research.

Q The Bureau of Research?

A I teach at the Bureau of Research as well.

THE COURT: Where did you go to school?

Q (By Mr. Moen) Tell us, where did you go to school?

A A Bachelor's degree, Bachelor of Science from Kansas State University; Master of Arts at the University of Missouri; Ph.D. in economics at the University of Arizona.

THE COURT: We will take our recess, I qualify him as an expert.

(Short recess taken.)

[428] (Court resumed.)

THE COURT: Now, gentlemen, before we start with Mr. Billings, because we try to keep a relaxed atmosphere here doesn't mean that I don't recognize the seriousness of this case. It is a very serious proposition and I realize that. However, I have found over many years that people do much better when they are relaxed. If I sat here and said nothing, you wouldn't know what I was thinking about and in my judgment it doesn't help the disposition of the case as far as counsel are concerned. You will note I never jump on the lawyers, but I do have a little fun with them on occasion. All right, go ahead.

Q (By Mr. Moen) Professor Billings, have you at my request made a recent study of the economic base of Spokane County?

A Yes, I have.

Q And when did you make the study?

A Within the last two months.

THE COURT: Now, I want to explain a ruling that I made just before court recessed, too, Counsel. In my judgment, Counsel, when a man has a Doctor of Philosophy degree in economics he is qualified to discuss economics as an expert. Whether he has expertise in the banking field is something else again.

[429] MR. MOEN: I did cut the qualifications a little short, because most of his testimony is factual and not opinion evidence.

THE COURT: Well, that is the basis of my ruling. He is an expert in economics.

Q (By Mr. Moen) Now, Professor Billings, for whom did you make the study?

A I made the study for the National Bank of Commerce and the Washington Trust Bank.

Q And what aspects of the economy did you review?

A I looked at the population, I looked at the buying income, I looked at the situation of households, how many households there were in the county, I looked at agriculture, mining, lumber, I looked at the trade area, retail trade, wholesale trade, and various other manufacturing in other areas.

Q And over what period of time did you review these?

A Primarily the last ten years, 1960 to 1970.

Q Now, did you prepare some exhibits as the result of your findings?

A Yes, I did.

Q And do you have a set of those exhibits with you?

A Yes, I do.

MR. MOEN: I would like what is designated here as Exhibits 1 through 7 and Exhibit 9 marked for [430] identification.

Q (By Mr. Moen) I will hand you what has been marked for identification as Defendants' Exhibits 1 through 7 and Exhibit 9, and I will ask you if you personally prepared those exhibits?

A Yes, I did.

Q I will direct your attention to Exhibit 1 and ask you what that is intended to show.

A Exhibit 1 shows total population for Spokane County for the 1950 census and then again for the 1960 census running consecutively each year through 1970.

Q Does this exhibit pertain to the City of Spokane or to the County of Spokane?

A It pertains to the county, Spokane County.

Q How does your exhibit show the growth of population in Spokane during the past ten years?

A The exhibit reflects that the population growth was quite moderate, as a matter of fact modest.

Q How would this compare with the population growth in the city during the same period?

A The population growth in Spokane County, for

instance, showed a positive increase of 3.3, I believe it was, percent, as opposed to the city itself which showed a decline of 6.1 between 1960 and 1970 census.

Q Now have you compared this growth with other cities in [431] the eastern part of the state?

A Yes, I have.

Q And how does it compare?

A Many other cities had a much higher rate of growth, a higher rate of growth in any event, in the ten-year period.

Q Do you have an opinion as to the current trend of population growth in Spokane County?

A Yes, I think the trend is one of stability, it is one of a moderate rate of growth for the county.

Q Okay, now what is Exhibit 2 intended to show?

A Exhibit 2 shows the number of households in Spokane County, again for the same period of time, and what I tried to do here also was show the percentage change from the previous time period, and if you will notice Exhibit 1 did the same thing, with the idea in mind, in the case of Exhibit 2, showing correlative evidence corroborative evidence, of Exhibit 1. It more or less supplements or substantiates what I found in Exhibit 1.

Q Now would you turn your attention to Exhibit 3. What does that show?

A Exhibit 3 shows employment in Spokane County. Again in this case from 1970 to 1971, the purpose of this was to try to get as recent data as I possibly could, and the latest I was able to get was 1971. So the purpose [432] is to show now what has happened in employment between 1970 and 1971 for the various economic sectors included here. These are economic sectors as identified by the source below, county business patterns, US Department of Commerce, Bureau of Census, 1971.

Q And what did you conclude from this exhibit?

A I concluded from it that certainly for an awful lot of economic sectors there are declines, they decrease. In fact, one of the significant things to me was that in seven out of the ten listed, seven out of the ten listed had minus change, percent change, between 1970 and 1971. Three of course were positive. One of the more

significant overall conclusions would be the total, so that for the county as a whole it does show that employment did decline by 1.5 percent for the sector.

Q Incidentally, is the source of your information shown on each of these exhibits?

A Yes, sir, it is.

Q Now, have you attempted to compare the employment of Spokane County with that of King County?

A Yes, I did.

Q And are these shown by any particular exhibits?

A Yes, Exhibits 4 and 5 show the comparison of employment in Spokane County and King County. Exhibit 4 shows the comparison of employment in Spokane and King [433] Counties just for the year 1970, and Exhibit 5 showed the same thing for taxable payrolls in Spokane and King Counties.

Q Do the figures here which pertain to King County, do they cover the period of time during which the employment situation at the Boeing Airplane Company was being contracted?

A Yes, they do.

Q What would be the significance of that fact?

A Well, I think a striking thing to me at least in looking over these is that during this time, this was of course the contraction in employment in King County, at Boeing particularly, and if we look on Exhibit 4 for example, under manufacturing, we find in employment there for 1970, for Spokane County, this constituted 17.6 percent of the total number of employees, whereas in King County it was 27.58, substantially larger, despite the fact that 1970 was the contraction period in King County due to Boeing's cutback.

Q And then what basic conclusions did you get from Exhibits 4 and 5?

A I think the basic conclusion from this would be, first of all, Spokane County is I think undoubtedly more stable than let's say King County, partly because it doesn't have—manufacturing doesn't have quite such a [434] large significance in Spokane County.

Q Now turning to Exhibit 6, why did you consider effective buying income?

A Because effective buying income reflects, I think

very importantly reflects the ability of the people to translate income into economic goods and services. I was primarily interested in the column on the right, where one can see in this I have made the comparison of effective buying income for Spokane County as a percent of effective buying income for the United States.

Q And how does the buying income in Spokane County compare with the percent of buying income for the entire United States?

A It does not in that sense compare favorably. It has declined regularly, monotonously. This would mean that Spokane County has not kept up with the United States on the average.

Q Okay, now did you prepare Exhibit No. 7?

A Yes, I did.

Q And what is that Exhibit intended to show?

A Exhibit 7 shows employment projection—oh, excuse me, Exhibit 7, if I may correct myself, shows the employment projection for the Spokane County region. I did not prepare that, I took that from the source indicated below, so this is not my work, Mr. Moen.

[435] Q And where did you get this work?

A I got this from the regional office of the Washington State Department of Commerce and Economic Development.

Q When was this exhibit prepared, do you know?

A Yes, in June of 1969. It was published in June of 1969.

Q And what does that show with respect to the projection of employment for 1972?

A It shows that for economic sectors in general, the body of economists or statisticians preparing this expected on the whole a rather moderate increase in employment, so that for total employment they came up with 3.8.

Q Now, do you think that this projection of employment was reasonable in 1969, at the time the exhibit was prepared?

A Yes, I do.

Q And the employment expected and projected for 1972 was reasonable at the time it was made?

A Yes, I do, at the time it was made. I would say I think I would probably have projected at least that much, possibly more.

Q And were you living in Cheney, Washington in 1969?

A Yes, I was.

Q And for the record, Cheney, Washington is where in relation to the City of Spokane?

A Cheney, Washington is about 16 miles to the south and [436] west of Spokane.

Q And that is the place of your residence?

A Yes, it is.

Q And that is the location of the Washington State College?

A Yes, it is.

THE COURT: Well, it is really Eastern Washington State College.

MR. MOEN: That is correct, I beg your pardon, your Honor.

Q (By Mr. Moen) In your opinion is this projection still reasonable, based upon what we know today?

A No, I can't say that, because if we look for instance at I think it is Exhibit 3 which we have already examined, if for instance we compare now the total on Exhibit 3, compare the total, or number of employees, we find that percentage changes in fact are minus 1.5, so it has declined by one and a half percent, whereas if we now come over to 1972 in Exhibit 7 we see for total employment they had projected 3.8 or roughly about four percent increase.

Q What was the purpose of including this Exhibit in your study?

A To show partly and largely the paths of error one can stray into when one tries to project into the future.

Q Now, directing your attention to Exhibit 9. What is [437] that intended to show?

A Exhibit 9, as contrasted with some of the other exhibits, it merely is to show a trend, a kind of trend of employment in Spokane County from 1960 to 1969. I did include the 1950 census for the purpose of showing the change from 1950 census to the 1960 census, which in this case, if I may make my point, showed a percentage change from 1950 of 15.6, but now of course if we take 1960 running through 1969 as in this case, we see rather modest and regular rates of growth.

Q Should that exhibit be considered along with Exhibit 3, and 4 maybe?

A Yes, actually it should be, I think probably looked at in connection with Exhibit 3.

MR. MOEN: Okay, I will offer into evidence Exhibits for identification 1 through 7 and Exhibit 9.

THE COURT: Is there any objection?

MR. HOFFMAN: Your Honor, I would like to save any objections until after cross-examination.

THE COURT: All right, we will reserve on it. Remind me after he gets through, to rule on it, will you?

Q (By Mr. Moen) Professor Billings, are you familiar with the phrase Inland Empire?

[438] A Yes, I am.

Q What is the economic significance of this term?

A As near as I can find out the Inland Empire is a concept which pretty largely came out of the newspapers, the Spokane newspapers, I suppose for developing a regional trade area.

Q Does it designate any geographical area?

A None whatsoever. None other than an arbitrary drawing of lines.

Q Would you say that Eastern Washington, and by that term I mean everything lying east of the Cascade Mountains, would you say that that area is economically oriented to Spokane?

A No, I would not.

Q Would you say that the City of Yakima or Yakima County is economically oriented to Spokane?

A Not in my opinion.

Q How about Wenatchee?

A Not in my opinion.

Q How about Walla Walla?

A No.

Q Ephrata?

A No.

Q How about the Tri-Cities?

A Not any longer. I think there was a time, in my [439] judgment, when Tri-Cities quite possibly was oriented to Spokane, but I don't believe that is any longer true, at least to anything like the extent it once was.

Q Now as a result of your studies do you have an

opinion with respect to the economic outlook for the City of Spokane?

A Yes, I do.

Q Would you tell us what that opinion is?

A Yes, I think Spokane, and especially Spokane County, can look forward to a moderate, modest rate of growth certainly in the near future, certainly in the next five years. Possibly if I were to try to look forward ten years, I still think it would be a moderate, modest rate of growth.

MR. MOEN: Thank you, your witness.

MR. HOFFMAN: Your Honor, I would like to beg the Court's indulgence. I have someone working on these statistics that Dr. Billings has prepared, and if we could recess long enough to allow me to make one short phone call, I would appreciate it.

THE COURT: Well, you go ahead and make your phone call and we will just stay in session here and wait till you get back.

MR. HOFFMAN: Thank you very much, your Honor, and I apologize.

[440] THE COURT: That's all right. You haven't been able to accomplish your mission?

MR. HOFFMAN: Well, I'm afraid my statistician wasn't able to complete her job in time.

THE COURT: Is it really very critical?

MR. HOFFMAN: I don't think so.

THE COURT: I don't think so either.

MR. HOFFMAN: Well, if your Honor wouldn't object, maybe possibly during the course of my cross-examination one of my co-counsel could assist and—

THE COURT: Well, the point is, you are trying to make a point, and actually the witness' figures are not at great variance with your own witness' figures.

MR. HOFFMAN: No, they are not, but I was particularly interested in having my statistician check on one of the sources that the witness used.

THE COURT: Is that a requirement of the [441] Washington State Department?

MR. HOFFMAN: No, your Honor. I think it will come out in the cross-examination.

THE COURT: Okay, go ahead. Let me ask you another question before you start your cross-examination. What, insofar as this case is concerned, do you feel the import of your witness' testimony and this witness' testimony is concerning the actual statistics of the growth of Spokane and other related statistics insofar as families in the area and so forth? What is the import of that?

MR. HOFFMAN: Well, I believe that the present witness will—

THE COURT: I mean the import of it? The import from your standpoint and from the defendants' standpoint. What is the import of the testimony, and I find that it is in agreement between this witness, this economist and your economist, Dr. Smith. They both say the growth was real slow.

MR. HOFFMAN: Well, not real slow, your Honor.

THE COURT: Well, moderate.

MR. HOFFMAN: To answer your question about the import of the testimony, your Honor, the defendants and the plaintiff disagree as to the existence of incentives for the N B of C entry into the Spokane area. [442] We contend that the N B of C, as a reasonably prudent profit-making organization has an incentive to enter the Spokane area, that is there is reason for them to enter into Spokane.

THE COURT: Well you mean prognosis so far as the future of business in the Spokane area is such that somebody wants to capitalize on this projected growth of the community and would have a great desire to come into the community because of the projected growth, is that the idea?

MR. HOFFMAN: Well, we believe that the growth of the Spokane area is one of the incentives, the economic characteristics of the city as a trade center.

THE COURT: I see. All right, the thing that bothers me is here you want to cross-examine this witness when I find that he is in agreement in substance with what your witness has said.

MR. HOFFMAN: Well, with the exception of his testimony as to the Inland Empire, the conclusions that he drew are rather similar, although I am sure that we and the defendants would find some differences in them.

THE COURT: Well, of course, but generally and overall they are strikingly similar to the testimony of your witness. I just don't find any—if there is [443] any variance it's of such minor significance that I couldn't distinguish it as far as your witness and he is concerned regarding the statistics.

MR. HOFFMAN: What I believe some of these exhibits that this witness has prepared are rather misleading in form compared with the exhibits that our expert has used and I believe our expert covered the growth in considerably more detail and so forth.

THE COURT: All right, but you want to show me that you don't want me to accept his and you want me to take yours. If I take yours, I will find, I am telling you now your witness is so strikingly similar to his that I'll accept both of them. So that's the way I'm going to come out. I've looked at his and I've looked at yours and I think the 1970 census is the same for both sides, isn't it?

MR. HOFFMAN: That's absolutely correct, your Honor, and that is one of the points that I hope to make—

THE COURT: You are talking about projections, is that what you are talking about?

MR. HOFFMAN: Well, I'd like to discuss his testimony of projections briefly with him. But I believe one point I would like to make is that the exhibits we submitted included virtually all of these numbers but they put them in a much broader perspective and show [444] the trends considerably more clearly.

THE COURT: All right, go ahead and we'll see where we go from here.

Q First, Dr. Billings, you called your study an economic base study, is that correct?

A Actually I called it a profile of an economic base but I'll accept that.

Q And what has been your experience in making base studies?

THE COURT: I don't think we need to go into that. Let's just go right into what he found, I want to cut this down in size, counsel, because I just don't think that is material, just what did he find—okay.

MR. HOFFMAN: I'll have to reorganize a little bit.

THE COURT: All right, you organize your thoughts.

Q I noted your testimony and in the discussion of Exhibit No. 1 on the population of the City of Spokane, that is the city proper, that a decline over a period from 1960 to 1970, is that decline unique to Spokane, would you say, or is it fairly typical of what is going on in the urban areas nationwide; do you know?

A I haven't compared all the urban areas nationwide [445] so I am not able to answer that except as to what happened in Spokane, the City of Spokane.

[446] Q You cited a source for your Exhibit 2, Sales Management Magazine?

A Yes.

Q Do you know how Sales Management Magazine prepares these statistics?

A I have been told how they do, at least how they go about projecting and getting these data. I believe they have some kind of a formula which they crank in and arrive at a figure in between the census years.

Q Do you have any idea what that formula might include?

A No, I do not.

Q Do you know or have any idea how reliable these figures have proven to be in the past?

A No, I do not. You are talking about an error of plus or minus, no, I do not.

Q Well, this is one of the things I had hoped that my statistician could prepare. But since you don't know, I don't suppose you can answer the question whether or not there is fairly widespread agreement that the usefulness of Sales Management figures are rather limited because of the unknown methodology and fairly consistent unreliability of them?

A As an economist I am completely aware of the criticisms of the Sales Management Magazine, the statistics, yes.

Q That's what I want.

A Wasn't it Oscar Morganstern who said, "To begin to count [447] is to begin to err."

Q I had never heard your quote. I have always heard the source of these figures described as a little

black box that they pull numbers out of and no one knows what else is in there.

A I have heard many of those, too.

THE COURT: Let's go on from there.

Q (By Mr. Hoffman) Can you tell me why you used the limited time period of 1970 to '71 on your Exhibit 3?

A My idea here was primarily to bring it up to date. The latest data—the very latest data I could get was the year 1971. I wish I had available 1972, but it was not, and at the time I prepared this, this was the latest, so that's what I used.

MR. HOFFMAN: I will note for the Court's information that these figures are contained in Government's Exhibit O-3.

THE COURT: Let me see O-3.

(Document handed to the Court.)

THE COURT: Let me see if it contrasts with what he said. His No. 3, is that what you are talking about?

MR. HOFFMAN: His exhibit 3 and our Exhibit O-3.

THE COURT: Well, you have a couple of [448] categories in there that he doesn't have, you have government employees, which I remarked dramatically increased, and I made some aside about something else in here about government employees as you recall too.

MR. HOFFMAN: We all have to eat, your Honor.

THE COURT: That is from 18.4—he doesn't have anything in there with regard to tourism, all those services. Let's see, services up to 19—that's right, he has that in there, he has 18.

MR. HOFFMAN: I would just note, your Honor, that O-3 appears to be rather more comprehensive than Exhibit 3 prepared by the witness.

THE COURT: That is true. All right. Now we are on 4?

MR. HOFFMAN: That's right. Exhibits 4 and 5 I believe the witness testified was to—that he used to draw a conclusion that the economy of Spokane is considerably more stable than that of the Seattle area, and I think we would agree with that.

THE COURT: All right. He gave as his reason the fact that manufacturing was a so much higher percentage of the total employment in Seattle. Like somebody once said about it, it is a one-industry town, something like that.

MR. HOFFMAN: That's right.

[449] Q (By Mr. Hoffman) I might ask the defendant whether or not—or the defendant's witness, Dr. Billings, whether or not the significance of that really is that the industry in Spokane—that the Spokane economy is considerably less dependent on one industry than Seattle is.

A That poses an interesting question; probably not because the one major manufacturer in Spokane, of course, is Kaiser, just as Boeing is the major employer in Seattle. Did I respond to your question?

Q Partially. You still have our Exhibit O-3 in front of you?

A Yes, I do.

Q You will note that a number of employees in primary metals has stayed roughly the same since 1950 although the total labor force has increased from 84,000 to 118,000. So would that lead you to believe that Spokane is now less dependent on aluminum than it used to be?

THE COURT: 18,000?

MR. HOFFMAN: 84,000 to 118,000.

THE COURT: In primary metals where?

MR. HOFFMAN: That is the total labor force.

THE COURT: Total labor?

Q (By Mr. Hoffman) The primary metals employment dropped from 3700 to—or it didn't drop, it changed from 37 [450] to 38 hundred, a change of only 100.

A And I might add in 1971 it was down to 3.5.

Q So does that indicate to you that Spokane is now less dependent on aluminum than it used to be?

A If I compare 3.7 in number of employees with 3.8, no, obviously this would tell me that approximately the same number of people are engaged in primary metals, but if you were to ask me whether or not the Spokane economy—if you were to ask me to—put it this way, if you were to ask me whether or not Kaiser Aluminum is of as much significance to the economy of Spokane

today as it was ten years ago, or the like, I would have to say that I do not believe it is.

Q Thank you. Your Exhibit 7 contains employment projections for Spokane County made in 1969 by the Washington State University?

A No—

Q That is made by the United States Department of Commerce.

THE COURT: No, No. 7 is made by the Washington State Department of Commerce and Economic Development.

THE WITNESS: Yes, your Honor, that's correct.

THE COURT: That is at Olympia. That is a new agency, it has been in existence about fifteen or more years, something like that.

Q (By Mr. Hoffman) Do you know what methodology the [451] University used in preparing these projections?

A What University?

Q Or, excuse me, the State of Washington Department of Commerce used.

A No, I do not.

Q You have no idea?

A I do not, no.

Q I would like to briefly comment on Exhibit 9. Your table contains the years 1950 and 1960 through '69, inclusive. Now, you state in your direct testimony that the—you noted in your direct testimony that the total number of people employed increased from 1950 to 1960 by 15.6 per cent?

A Yes, I did.

Q Now, I have done a little quick arithmetic—

THE COURT: So did I, it's just about the same.

MR. HOFFMAN: That's what I got in the 9-year period, which is less than a 10-year period.

Q (By Mr. Hoffman) Previously it increased 13%, so can you really draw any conclusion as to the differences between the Spokane employment situation now as there was between ten or twenty years ago on the basis of this exhibit?

A Well, we all know, of course, that if we take census years and compare census years, that what happens in

[452] between maybe plusses and minuses as is perfectly obvious if we look at the individual years from '60 through '69 in this table.

Now, of course, I presume we all know that there is such a thing as on the average how much the increase would be between 1950 let's say, and 1960, which could be done by a least Square Fitted Function fitted to the data. But I did not do that, thinking that that far back probably as good as anything would be simply to compare the census figures 1950 and the census year 1960 and then picking up each year as we go through trying to get some idea of individual year changes in employment.

Q I don't want to belabor the point, but—

THE COURT: Here is what I got out of this, Counsel, see if this will help you. Your witness testified—of course, I didn't go into it from this standpoint, but your witness testified that we had sort of a recession along in the area where we have a decline here, didn't he?

MR. HOFFMAN: That's right.

THE COURT: Then we have a gradual change from '64 through '69 where you have an increase. That is what I get out of it, isn't that it?

MR. HOFFMAN: That is what I get out of it too.

THE COURT: Sometimes, I want you to know that I am following what people are saying, remembering what their testimony is because it is important to you to know that, isn't it?

MR. HOFFMAN: Yes, it is, your Honor. In that regard I might point out that our witness, Michael Marston, also mentioned that when using his annual average change, it would fluctuate from year to year, but he was trying to chart an overall trend.

Q (By Mr. Hoffman) Now, as to the testimony on the Inland Empire, I think you stated that you thought that that idea was manufactured by one of the local newspapers; what makes you say that?

A The word "manufactured" is yours.

Q Well, perhaps you can clarify that.

A What I did testify to was that the concept of the Inland Empire came from the newspapers. Now, where

did I get that? I got that from the Chamber of Commerce of Spokane.

Q And does the origin of the term "Inland Empire" reflect on—how shall I say this—on the validity of the—or does it have any bearing on the question of whether or not there was a broader economic area which Spokane serves?

A Would you clarify that question?

[454] Q I asked you if the origin of that term had any bearing on whether or not there actually is such a trade area.

A Oh, I suppose there is. In the past, certainly there was a great deal of validity to the term "Inland Empire" as, I presume you are trying to say, a "trade area".

Q That's right, that's what I was referring to.

A Yes, I will admit that, certainly.

Q And do I understand you to deny that Spokane serves as a trade center for a larger geographic area than just the metropolitan area?

THE COURT: I don't think that's what he said.

THE WITNESS: I hope not.

THE COURT: He didn't say that, Counsel. I think what he said was that, in response to the question, it serves a trade center for the larger area, but his answer to Mr. Moen's question regarding Yakima, Walla Walla, he threw in Ephrata, he could have stayed away from that one because that's a little closer, Yakima, Walla Walla and Wenatchee he said didn't,—he didn't think that those areas were affected by Spokane so far as the trade areas. Isn't that what you said?

THE WITNESS: Yes, your Honor, that was the gist of it.

THE COURT: He qualified the Tri-City saying [455] he didn't think it was now but it had been more so in the past.

THE WITNESS: Yes, your Honor, that's correct.

THE COURT: That's what his answer was, Counsel, I think, and I don't think that he said that it wasn't a wider trade area than just the county. I'm sure he didn't say that.

THE WITNESS: If I did, I would retract it.

[456] MR. HOFFMAN: I just wanted to clarify that point, your Honor.

THE COURT: Well, you should know he's living in Cheney, he knows.

THE WITNESS: Indeed I do, sir.

THE COURT: So he knows, Southern B.C., Northern Idaho, is that right?

THE WITNESS: Yes, your Honor.

MR. HOFFMAN: I'd just like the witness to turn to Government's Exhibit No. O-19, which is—

THE COURT: O-19? All right, let's see what that says.

MR. HOFFMAN: More particularly I think perhaps Exhibit O-20 would be better for our purposes, your Honor. O-20, your Honor, is entitled a map of the Inland Empire of environmental regional relationships and it includes a large part of the area we are talking about —Eastern Washington, Montana, Idaho, part of Oregon, and it contains percentages in each county that represent the percentage in the households in the county which received the Spokane Sunday newspaper and it is separated into three areas called primary, secondary and tertiary. Would you agree that the primary area as denominated on this map is at least roughly the area of Spokane's greatest economic influence?

[457] A I am going to exercise your Honor's prerogative saying—no—

THE COURT: Go ahead.

A No.

Q I will use my prerogative and ask why.

THE COURT: Why?

A Well, because what we're looking at is a map of the so-called—Inland Empire—what is commonly referred to as the Inland Empire but it shows as you correctly say, newspaper distribution to the total households and distribution of newspapers to households isn't necessarily—

Q I believe that is what I asked you. I didn't ask you whether you thought it was a reasonable indicator.

A Well, then I misunderstood your question.

Q What I asked you was whether or not the area denominated as a primary area is the area of Spokane's greatest economic influence?

THE COURT: You're talking about the area that—

MR HOFFMAN: The horizontal lines, your Honor.

THE COURT: Horizontal line areas. Those areas are the greatest economic influence.

A Well, I can only answer that this way—if you mean relative to more distant or outlying areas, that would [458] tend to be generally correct because of the geographical position vis-a-vis Spokane, which obviously is closer.

Q And would you say that after that area denominated primary area would you say that the area denominated secondary and tertiary areas represent respectively diminishing areas of economic influence?

A I think that's very safe to say because one gets over into Montana, instance, as far over as Missoula, I think the influence of Spokane, the Spokane region, is very, very small. Yes, I think that the farther one gets out has a degree of less influence.

Q So overall the areas designated as primary, secondary and tertiary areas reasonably and accurately reflect the geographical extent of the influence of Spokane?

A It reflects the geographic, yes, of Spokane, yes.

Q That is all I have, your Honor.

THE COURT: Well, so far as that map is concerned, Professor, take Missoula. That's pretty much of a trading area and banking area, et cetera, all to itself?

THE WITNESS: Yes, sir.

THE COURT: Has 77,000 people there now?

THE WITNESS: That's right.

THE COURT: Then you go to Yakima and the same [459] can be said for Yakima?

THE WITNESS: Yes, sir, and the same could be said for the Tri-City area.

MR. MOEN: At this time, your Honor, the defendant will reoffer Defendants' Exhibits No. 1 through Exhibit No. 17 and Exhibit No. 9.

THE COURT: They will be admitted.

Now, we have a half an hour to go. Do you have somebody you want to put on now—do you have anybody here? You might as well start them out now so they'll know they'll have to come back tomorrow.

MAXWELL CARLSON,

called as a witness on behalf of the Defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MOEN:

THE COURT: I'm not sure I got the name—is that Mr. Carlson?

THE WITNESS: Yes, sir, Maxwell Carlson.

THE COURT: All right, Mr. Carlson.

Q (By Mr. Moen) Mr. Carlson, would you state your full name for the record please?

A Maxwell Carlson.

Q And what is your residence address?

[460] A 1626 Federal Avenue East, Seattle, Washington.

Q By whom are you employed?

A The Marine Bancorporation.

Q In what capacity?

A President.

Q Are you the chief executive officer?

A Yes, I am of the Marine Bancorporation, yes, sir.

Q Were you formerly employed by the National Bank of Commerce?

A Yes, I was. I first joined the organization in July, July 1st, 1929, at the Grays Harbor National Bank which is owned by the Marine Bancorporation, and was transferred to Seattle the following year as auditor and examiner for the Marine Bancorporation and then in 1937 I became credit manager of the National Bank of Commerce and ended up as president of the National Bank of Commerce in January of 1940.

Q During this period while you were the president, were you also the chief executive officer of the National Bank of Commerce?

A Chief executive officer from 1948 until I retired at the annual meeting in January of 1971.

Q Now, what is the principal function or purpose of the Marine Bancorporation?

A Marine Bancorporation is the holding company for the [481] National Bank of Commerce engaged in the banking business. Coast Mortgage Company engaged in the mortgage banking business, and for the Commerce Finance Company which is engaged in miscellaneous transactions.

Q Does the Marine Bancorporation own any other banks?

A No, sir.

Q Would you tell us just briefly the business of these companies that you just mentioned, that you said are affiliated with or subsidiaries of the Marine Bancorporation?

A Well, the National Bank of Commerce is looked upon as a commercial bank operating a department store of finance and it is one of the 50 largest banks in the United States. It operates domestically in the State of Washington and internationally it has offices in Tokyo, Hong Kong, Singapore, London and has two edge corporations with headquarters in New York and Los Angeles.

Then as far as Coast Mortgage is concerned it is a mortgage banking business generating, selling and servicing mortgages. Commerce Finance Company, which for a long time was called the King County Building Company, has been activated at the present time and it is in the process of establishing divisions. The first division was established which was the Commerce Marine where we're financing boats and [462] waterfront equipment, and we are establishing an aviation division to finance airplanes, and I imagine before we get through we'll be in the leasing business, the personal finance business, subject to approval of the Federal Reserve.

Q Do you now have a company called the Naboc?

A Well, that's the nominee for the press department.

Q How about Cascade Capital Corporation?

A Cascade Capital Corporation is a joint venture between a small business investment corporation with the U.S. Bancorporation. We have close to 50 percent and they have, well, let's see, we have 49 percent and they have 49 percent in a joint venture.

Q Now, are these subsidiaries you have mentioned competitive with the National Bank of Commerce?

A Yes and no. For instance, Coast Mortgage generates mortgages of different quality from the National Bank of Commerce. Their outlets are the insurance companies and the savings banks which would not be interested in the quality that the National Bank of Commerce generates. The National Bank of Commerce does not buy mortgages from Coast Mortgage so Coast Mortgage is quite separate from the National Bank of Commerce.

As far as Commerce Finance Company is concerned, we have this division referred to as— [463] and the bank through some of its branches generates boat, pleasure boats and others, but not very many of

[END OF CHECK TAPES]

our branches are knowledgeable with regard to waterfront and so we took one of the managers of the National Bank of Commerce who was knowledgeable with regard to the waterfront and I put him in charge of Commerce Marine. And frankly I don't mind if there is a little competition between the National Bank of Commerce and the Commercial Marine when it comes to financing boats. [464] Q What I was trying to get at is do these companies furnish the same type of service or conduct the same type of business as the banks?

A As far as Coast Mortgage is concerned, as I say, they generate a quality of mortgages that is quite different from the National Bank of Commerce. As far as Commerce Credit is concerned, there can, and I would expect there will be some competition between the bank and this subsidiary, and I would encourage it.

Q Now, directing your attention to the National Bank of Commerce, in what year was the bank originally organized?

A In 1889.

Q And has it operated continually since that time?

A Yes.

Q Was it originally organized as a state or a national bank?

A It was originally organized as a state bank, and converted to a national bank in 1890.

Q I think you testified that you first started to work for the bank in 1929, is that correct?

A Yes.

Q And how big was the bank at that time?

A Oh, the National Bank of Commerce at that time was probably 25 million, with a capital account of close to 4 million.

[465] Q And did the bank have any branches at that time?

A Branch banking was not permitted at that time, and that is the reason that Andrew Price, Sr. established the Marine Bancorporation in 1927, to acquire banks by way of chain banking, and the banks that were acquired during that decade of the 20s, such as the National Bank of Commerce, the Capital National Bank, the Grays Harbor National Bank and so forth, with one exception they were all branched in 1933 when branch banking was permitted in the State of Washington.

Q Was there any particular reason or industry problem which precipitated the movement towards branch banking, or I should say a change in the Washington laws to permit branch banking?

A Well, it takes a crisis to bring about a change, and I guess the crisis was the great depression of the 1930s.

Q And did this lead to a change in the Washington banking laws?

A Yes, branch banking was permitted in 1933 as a result of the bank difficulties of that age.

Q And when did the National Bank of Commerce acquire its first branch?

THE COURT: I think he testified, didn't he, Mr. Moen, that all of these banks that the holding company owned were branched when the law was passed, [466] isn't that right?

THE WITNESS: That is right. They were branched

in 1933, one of them, the First National of Mount Vernon came along later, that branched maybe fifteen years ago.

Q (By Mr. Moen) How many domestic branches does the bank have now?

A A little over a hundred.

Q And how many of these branches were acquired by the acquisition of an established bank?

A Oh, I don't have the figures but I would say half of them were established by acquisition and half of them were established de novo, more or less.

Q And how many branches were established during your term as president of National Bank of Commerce?

A Quite a few of them, it is a matter of record, and I don't have it with me.

Q I understood you retired in 1971, is that right?

A Yes, I retired in January of 1971.

THE COURT: That is a bank policy nowadays, isn't it? Don't they have a general retirement age?

THE WITNESS: In our bank officers and employees retire at 65, directors retire at 72. When I retired I was asked to be chairman of Marine Bancorporation, and the reason I am president of Marine [467] Bancorporation at the present time is because Justice has delayed our merger with the Washington Trust Bank, and because I had counted on Phil Stanton and some of his associates to join the management of the National Bank of Commerce. So it is necessary for Andrew Price to devote almost all of his time to the bank, and so I am pinchhitting as president of the Marine Bancorporation.

THE COURT: All right, I didnt want to pry into it, but you have said it anyway. All right, go ahead.

Q (By Mr. Moen) Mr. Carlson, is there any particular reason that you seek to establish branches of the National Bank of Commerce?

A Well, our job in the National Bank of Commerce is to grow and be competitive, make money for the stockholders, and be good corporate citizens.

Q Now since enactment of the law legalizing branch banking in 1933, has the National Bank of Commerce ever to your knowledge started a bank or assisted others

to start a bank for the purpose of subsequently acquiring the bank as a branch of the National Bank of Commerce?

A Not during my administration of over twenty years.

Q Does the National Bank of Commerce now have any branches as a result of a conversion of another bank which the National Bank of Commerce assisted originally to get [468] started?

A No, not to my knowledge.

Q Does the National Bank of Commerce get any requests for assistance to start new banks?

A We have a correspondent bank department, and their job is to serve our correspondents, to maximize the deposits that they carry with us, and to be alert to any banks that are being contemplated, in order that we may have a correspondent bank relationship. And to offer help in various ways through making our expertise available to them.

Q If people come and ask you for assistance, what kind of assistance is usually requested?

A Well, they want to know how to go about it, and we have some knowledge there. If they need some help in connection with real estate, furniture and fixtures, forms, if they need some help in connection with management, we try to help them in every way we can. And if a relationship is established, then of course we can help them through our investment department and our other specialized departments.

Q Now when assistance of this kind is offered, is it conditioned in any way on obtaining a correspondent relationship, or in any other way?

A Our correspondent department is anxious to be helpful, and of course we have some eager beavers in that [469] department, just like in other departments. We don't get very far without some eager beavers, and so we have got some eager beavers in that department. So they go all out to try to be helpful, and of course other banks likewise try to be helpful, and so there is some competition, and sometimes we are helpful and they will go some place else and we are disappointed that

we have put in some work and didn't gain anything. And then again perhaps a relationship might develop from it.

Q What benefit does Commerce hope or expect to get from assisting others to start a new bank?

Q Well, we thrive on deposits, and a correspondent relationship involves deposits. Once a correspondent relationship is established, we like to think that the deposits are possible, that we have an opportunity to carry their overlines, that we have an opportunity to make investments for them, that they will send their transit checks through us, and use our services as much as possible, and in the process we make some money off the relationship.

Q Now do you ever get requests for loans to prospective stockholders for new banks, for the purpose of purchasing stocks in the proposed new bank?

A Yes, that is part of it, and we would like to think that as far as those loans are concerned, they are made [470] and creditwise they stand on responsibility indicated on the statement.

THE COURT: My understanding of his answer is that when somebody comes in and wants a loan, his personal statement, which includes his character, his ability to pay and so forth, that is the basis of the loan?

THE WITNESS: Primarily, yes.

MR. MOEN: That is the next point I wanted to develop.

Q (By Mr. Moen) Does N B of C ever give loans to applicants who otherwise would not be creditworthy?

A Not to my knowledge.

[471] Q Have any of these banks that you have assisted in getting started subsequently been acquired by N B of C?

A Not to my knowledge. To my knowledge, all the banks acquired have been long and well established.

Q Have you ever assisted in a bank getting started that was branched by a competitor?

A Yes, we have acquired banks that were sponsored by a competitor or helped by competitors. The Bank of Grandview, as an example, we had nothing to do with that one, but we bought it.

Q How about Moses Lake?

A Moses Lake, we helped that one get started but we lost out to another bank.

Q Did the bank assist the Columbia Center National Bank to get started?

A Yes.

Q And will you tell the Court what your interest was in getting that bank started?

A We helped that bank get started at the request of Allied Stores, the national department store corporation that owns the Bon Marche in Seattle, the Bon Marche in Spokane and a chain of stores in this area. They invited us to establish a branch at Northgate years ago, and they invited us to establish a branch at South Center, and we were unable to go it at that time, but [472] we are now in Southcenter at the present time. And Allied Stores asked us to establish a branch in their shopping center in the Tri-City area, and we told them that unless there was an incorporated area—frankly, as I remember the story, we were hopeful there might be an incorporated area in that county—unless there was an incorporated area, we could not establish a branch. The area was not incorporated, and Allied Stores—

THE COURT: Did they promote Mr. Loney?

THE WITNESS: No, Mr. Loney was and is our attorney for the Kennewick branch.

THE COURT: I see. All right.

THE WITNESS: And I think there was a local bank maybe over at Prosser some place that showed an interest. But they weren't satisfied with having in their shopping center just a branch of a small country bank, and because of the relationship with Allied Stores—the Seattle vice-president or the president of Bon Marche was a director of ours at that time, and the present vice-president also was a director of ours—and to accommodate Allied Stores and considering the importance of the relationship, we agreed to help the bank get started. And it was important enough to assign Mr. Price as chairman to the job.

[473] Q Was that bank organized then?

A The bank was organized with the help of the officers of the National Bank of Commerce. Mr. Price and his associates were instrumental in helping to place the stock. I think Mr. Loney was asked to help because he was a local over there and familiar with the area. I told him as far as the National Bank of Commerce is concerned, we would—I told my associates we would be glad to help them get started, and as I say, Mr. Price and his associate with Mr. Loney's help and others placed the stock, and I suggested they place them in friendly hands. After all, we are anxious to get a correspondent relationship.

I suggested to them that they go to Montana or Idaho and try to find someone to run the bank, and they made an effort in that direction. When they couldn't find anybody, then the question was raised whether we got someone in the National Bank of Commerce that would be helpful, and I said I would prefer that no one be found in the National Bank of Commerce to be president of that bank. It would be much better if it were someone from some other part of the State of Washington or the Pacific Northwest. But when they couldn't find someone, and they indicated at Camas we had a branch manager by the name of Jack Horning, I [474] said all right, but he'll have to divorce himself completely from the National Bank of Commerce, and he did. He lost his seniority with the National Bank of Commerce because there was no promise that he would ever come back to the National Bank of Commerce directly or indirectly.

He gave up his seniority as far as the pension plan is concerned, and we returned to him what he paid into the pension plan. Then when I found out that a loan of $2500 had been made available to him to buy some stock in the new bank, because after all, he was going to be president and he should have a little bit of stock, I didn't think that it was quite enough for a young man sacrificing his future with the National Bank of Commerce, and with no assurance that he would ever come back, I suggested that we had better loan him

$10,000 so he would have a little stake in that bank to make up for what he was losing with the National Bank of Commerce. So through what is now Commerce Finance Company, we loaned him $10,000 to buy some stock.

Q Was the bank formed for the purpose of converting it to a branch bank of National Bank of Commerce?

A The bank was formed for the purpose of accommodating the Allied Stores, one of our most important customers.

Q Is the bank operating today?

[475] A The bank is operating today, yes.

Q Is it a branch of Commerce? Does it operate as a branch of Commerce in any way?

A Not to my knowledge.

Q Is there any agreement or obligation, oral or written, on the part of National Bank of Commerce to purchase the bank or convert it into a branch of the National Bank of Commerce?

A Not to my knowledge. This bank was not started with the view to it becoming a branch of the National Bank of Commerce.

I might say this too, that in connection with any correspondent relationship that we have with any bank, that if the time comes for them to sell out, we would like to think that our people are alert enough to sense what is going to take place, that we have an opportunity to either negotiate or to bid with others—against other banks.

Q But to your knowledge there is no obligation on the part of Commerce to buy the bank or on the part of Columbia Center or any of its stockholders to convert it to a branch of the National Bank of Commerce?

A No, not to my knowledge.

MR. MOEN: I am about to go to a different subject, it's 4:25—

THE COURT: I was thinking maybe if you [476] wouldn't be too long, we could go on with the cross, but I guess he will have to come back tomorrow.

THE WITNESS: I'll be back here anyway.

THE COURT: Well, all right, come back tomorrow morning.

MR. TORRE: Before we adjourn, I wonder if it would be possible if the day before the defendants call their witnesses or the intervenor calls their witnesses, we could have a witness list as to who would be coming because we haven't got any order on their pretrial witness list, and it would facilitate our cross-examination.

MR. MOEN: I will give you that information.

MR. HARTMAN: We will be happy to give him that sort of list.

THE COURT: After the court hours with no referee you can get together with the other people and see if you can get that information. I am satisfied they will take care of it.

Is there anything you would like to take up in connection with this case now? Mr. MacMurray is coming tomorrow morning?

MR. TORRE: Hopefully he will be here tonight.

THE COURT: Do you want to put Mr. MacMurray on and then you can go back with Mr. Carlson afterwards?

[477] MR. MOEN: I would suggest that Mr. MacMurray be the first witness in the morning so that they could rest and conclude their case.

THE COURT: I think maybe that would be helpful to Mr. MacMurray if he wants to get back to Alaska. Maybe you can get through with him so he could go back tomorrow rather than to have to stay over an extra day. That is the way we will proceed then.

No objection?

MR. TORRE: No objection.

THE COURT: We will put Mr. MacMurray on, then Mr. Carlson can resume his direct examination after Mr. MacMurray is through. I take it there isn't anything he has testified to that would require on your part, counsel, any great memory? You are pretty familiar with this, aren't you?

MR. MOEN: We have pretty copious notes.

THE COURT: You have his deposition too, don't you?

MR. TORRE: That's right, your Honor.
THE COURT: All right, we will recess then until 9:30.

(At 4:28 p.m. the court recessed for the day.)

[478] CERTIFICATE

WE, W. L. Mayrand, Gerald J. Popelka and Paul C. Tveten, Official Court Reporters for the United States District Court, for the Western District of Washington, do hereby certify that the annexed and foregoing is a full, true and correct transcript of proceedings had in the above-entitled and -numbered cause, on the date hereinbefore set forth, and we do further certify that the same has been prepared by us, or under our direction.

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_____

[479] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
A TACOMA

No. 237-71C2

UNITE STATES OF AMERICA, PLAINTIFF

vs.

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE, ET AL, DEFENDANTS

[Filed in the United States District Court, Western District of Washington, Jun. 22, 1973, Edgar Scofield, Clerk. By M. Deputy]

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and -numbered cause in the above-entitled Court before the Honorable WILLIAM N. GOODWIN, United States District Judge, on Thursday, January 11, 1973, at the United States Courthouse, Tacoma, Washington.

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VOLUME IV

[480] APPEARANCES

RICHARD J. TORRE,
ALLAN S. HOFFMAN,
PHILIP L. VERVEER, and
RONALD SILVERMAN, Attorneys, Antitrust Division, Department of Justice appearing for and on behalf of Plaintiff;
JAMES WILLIAM JOHNSTON and
R. A. MOEN (of Graham, McCord, Dunn, Moen, Johnston & Rosenquist), and
DANIEL M. GRIBBON, and
CHARLES LISTER, of (Covington & Burling), appearing for and on behalf of Defendants;
JON HARTMAN and
THOMAS McLACHLEN, appearing for and on behalf of Intervenor.

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[481] PROCEEDINGS

THE COURT: All right, Mr. Verveer, if you want to call your witness?

MR. TORRE: We have a preliminary matter, your Honor, regarding a few more documents.

MR. VERVEER: Your Honor, as we are nearing the conclusion of our case, we would like to do a little housekeeping here, please. I believe the Court already admitted Government's Exhibit F-1. We would request the admission of Government's Exhibit F-2 because it is a continuation of the memorandum that is on F-1.

THE COURT: Is there any objection to that?

MR. JOHNSTON: Well, your Honor, as I understood, we have the same objection as we have expressed in the past to all these documents.

THE COURT: Well, this is conversations with people —well, in this particular one, F-2 for example, is what Mr. Moen was wondering about who to contact for the case, is that the idea?

MR. VERVEER: Well, your Honor, we don't care about the entry labeled 6/15/71, just the first sentence at the top of F-2, which is a continuation of the thought on F-1.

[482] THE COURT: All right, I see.

MR. MOEN: It might be helpful if counsel would tell us what the purpose of all this is.

THE COURT: Well, I just can't see, in F-2 for example, it just talks about the strategy of what counsel should be employed,—what does that have to do with the ultimate resolution of the issues?

MR. VERVEER: Absolutely nothing, your Honor. As I said, all we are concerned with is the first line on page F-2. As far as we are concerned, we would be happy to see the rest of F-2 expunged.

MR. MOEN: It is not only irrelevant and hearsay, your Honor, but it is probably a privileged communication.

THE COURT: Well, that is right.

MR. HARTMAN: Your Honor, just for the record, I would also have objection to the document on hearsay and relevance.

THE COURT: I don't see any relevancy, and it is obviously double hearsay.

MR. VERVEER: Your Honor, we introduced this originally to rebut the contention that there was a public hearing held in connection with this merger application. This document sets forth the nature of the so-called hearing, we think very clearly.

[482-A] THE COURT: I understand. Well, whatever that has to do with this. All right. Of course I am not reviewing the hearing.

MR. VERVEER: Yes, your Honor, we certainly agree with that.

Also, your Honor, we would like to move the admission of Government's Exhibit F-29.

THE COURT: That one is hard to read.

MR. VERVEER: Yes, your Honor, and I apologize for that. This exhibit is related to Professor Smith's testimony on the nature of the competition in oligopolistic industries, and the relevant part, your Honor, we feel is the large paragraph in the middle of the page dictated by R.M.M., who we believe is Mr. Mills, former senior officer of National Bank of Commerce.

[482-B] THE COURT: Do you want that part you asked—you object to, I'd like to have you as a competitor —that part?

MR. VERVEER: Yes, your Honor, the sentence following that.

THE COURT: We always welcome competition.

MR. VERVEER: And the next sentence, your Honor. And then the next sentence.

THE COURT: Well, since you can't beat them, you want to join them. Is that what you had in mind?

MR. VERVEER: That is right, but of course this is pre Philadelphia National Bank, your Honor. The sentence which refers to, well, particularly which I referred to was—"I assured him if such a union would ever come into being—this would be Mr. Mills speaking to Mr. Scamell, vice-president of the Washington Trust— that

they could be well assured that they would find the National Bank of Commerce most cooperative and they would be one of the first to be informed if we made any changes affecting both banks." This conversation was in light of the rumor that the National Bank of Commerce might make an effort to acquire the Old National Bank of Spokane.

THE COURT: Well, all right.

MR. JOHNSTON: For the record, your Honor, I'd [483] like to state our objections to the exhibits are based on the grounds stated in the Standard Oil against Moore, found at 251 Fed. (2d) 188, with reference to that portion of the opinion concerning business records. It is very explicit as to the admissibility and classification of this sort of evidence even when there has been a foundation for it, which in this case there has not been.

MR. VERVEER: Would you restate that citation for us, please?

MR. JOHNSTON: That would be Standard Oil Company against Moore, 251 Fed. (2d) 188.

MR. VERVEER: What circuit was that?

MR. JOHNSTON: It is the Ninth Circuit.

MR. VERVEER: What year?

MR. JOHNSTON: My pencil notes aren't here, wait a minute I have it here, just a moment—I have part of the case here but it doesn't show the front of it so I don't have the year on it. I am sorry.

THE COURT: That would be back in 1955?

MR. JOHNSTON: 1957.

THE COURT: Well, the memorandum is 1955.

MR. VERVEER: Yes, your Honor, we think it goes to Professor Smith's point about finding such memoranda over a long period of time and you recall [484] that Professor Haywood stated that it was remarkable that he'd only found four. We could point out a good many more, if your Honor desires.

THE COURT: Well, it depends on how you—

MR. MOEN: It goes back over a period of twenty years, your Honor.

THE COURT: Well of course most of it is as to the health of Mr. Stanton's wife, which of course isn't material.

MR. VERVEER: That's right, your Honor.

THE COURT: And the next conversation is between people concerning 1955 and something about somebody said they'd rather have the N B of C than they would Belgrano's outfit.

MR. VERVEER: I believe that's the Trans-America Corporation, your Honor.

THE COURT: Well, that's got whiskers on it, counsel. As to this conversation I don't think it is really material but I'll let it in because maybe somebody at another level would like to read it and I don't think they would be much impressed, but I hope not—go ahead.

MR. VERVEER: That's all I have, your Honor.

THE COURT: Frankly, that's digging too deep. That goes to the oft stated cliche which states [485] "You're scraping the bottom of the barrel", going back to 1955.

MR. TORRE: I think it is relevant to that, your Honor and—

THE COURT: Well, I don't want to argue with that. All right, let's go.

JOSEPH C. MacMURRAY

called as a witness by and on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TORRE:

Q State your name and address for the record .

A Joseph C. MacMurray, Juneau, Alaska.

Q What is your present position, Mr. MacMurray?

A Director of Banking and Securities for the State of Alaska.

Q What are your duties in that position?

A Well, the Division of Banking and Securities is a division of the Department of Commerce for the State of Alaska and it has responsibilities for the administration and enforcement of several statutes. Statutes such as the banking code in Alaska, the Alaska Securities Act and the Corporation Code and the Uniform Land Sales

Practices Act and the Small Loans Act and a [486] couple of other lesser pieces of legislation.

My duties are primarily administrative. As to the banking code, the Alaska Securities Act and the Small Loans Act regulatory.

Q Do you have the authority to grant bank charters and regulate banks in that position?

A Are you talking about the State of Alaska?

Q Yes.

A The Department of Commerce is the chartering authority and the responsibility for determinations is delegated in the department to this division of the Department of Commerce, of the Division of Banking and Securities.

Q How long have you held that position?

A Oh, approximately 16 months.

Q Have you ever held a similar position in any other state?

A In the State of Washington.

Q The State of Washington?

A Not exactly. Similar, but not applying to so many areas.

Q What position was that?

A Supervisor of banking.

Q How long were you supervisor of banking?

A From 1958 through the early part of January, 1965.

Q Have you ever been employed by a banking organization?

A Yes.

[487] Q Which one was that?

A The Seattle Trust & Savings Bank in the City of Seattle.

Q During that period what was your position?

A I was a Trust Officer with the Seattle Trust & Savings Bank from approximately 1954 to the middle or fall of 1957—the summer of 1957, actually.

Q Now, in your opinion, Mr. MacMurray, what is the prime consideration of the banking regulator in regard to permitting new entry?

A New entry, you mean entry of an new bank?

Q Yes, sir.

A A new bank you are talking about in the State of Washington?

Q Well, generally speaking.

MR. HARTMAN: Well, your Honor, I think it ought to be made clear as to what he is referring to. He is the supervisor of banking of the State of Alaska.

THE COURT: Well, let's leave it to the State of Washington, he was down in Olympia supervising for a long time so go ahead.

MR. TORRE: I just directed this as a broad question.

Q In your experience as a bank supervisor and in Washington, what, in your opinion, has been the prime consideration of the bank regulator in granting new [488] charters to permit new entry of the banking community or banking market?

MR. HARTMAN: I object to the relevancy, your Honor.

THE COURT: Well, I'll let him answer.

A Now, I'll answer it this way: It was an assumption that you're referring to the consideration that a bank regulator would give in connection with the determination that he would make?

Q Right.

A Well, his first responsibility as bank regulator is to the soundness of the banking system, that there is and he has the direct responsibility there. That is his first concern as to whether the result would be sound, and if there would be any possibility of an unsound bank. Rather, if an unsound bank resulted from a chartering action, then he should refrain from chartering actions; so the first consideration would be that the proposed bank be reasonably expected to be, based on all of the circumstances contained in the application, for a sound bank as a permanent addition to the banking system.

When I say "sound" I'm talking about sound in terms of solvency and conditions of the bank as being a viable institution.

Q I would ask you to assume that all the requisities and [489] practice for the chartering of a new bank are met in a specific community by a special group of bank organizers—do you believe that the regulator should permit

entry if entry will not result in an unsound banking environment?

[490] MR. MOEN: I object, your Honor. He said if all the requisites were met, would he grant the charter. I don't know what he meant by "all the requisities."

THE COURT: I think you ought to be more specific, Mr. Torre, and I think Mr. MacMurray would appreciate it, too, because it is pretty hard to answer a question with that many ifs to it, because I am sure that's what his answer is going to be.

Q (By Mr. Torre) If it is a situation where a bank is seeking a charter, I ask you to assume that the Bank has the proper location, proper capitalization, proper management, and that there is a need existing in the community for the bank, if all those factors exist, do you believe that the regulator should permit entry, or should charter that bank, if that charter does not jeopardize the soundness of the banking environment of the community?

A Provided that all of those ifs are satisfied and are not qualified, in other words, if all the banking factors which you have referred to are present in a positive way, yes. The banking regulator has no arbitrary authority to withhold the bank charter on a basis of—I don't know what basis would be suggested for withholding from what you have said.

Q What is the duty or an obligation of a bank regulator as [491] regards chartering new banks with regard to introducing competition into the community?

A Well, may I go back. I am presently employed by the State of Alaska in this regulatory capacity. I was formerly employed by the State of Washington in a regulatory capacity of supervisor of banking. I mention this because each state is sovereign, and its state laws govern the actions and determinations of the respective state employees. You are asking me a question that cuts across state lines, as it were. Could you ask me the question in terms of—

Q Well, do you feel that competition is in the public interest?

A Yes.

Q And do you feel that new entry increases competition?

A Yes.

Q And do you feel that new entry meets the public interest in that it increases competition, and therefore should be allowed by the regulator?

A Providing all the banking factors that were mentioned previously were met, yes.

Q From your experience as a bank regulator in Alaska and Washington, but primarily in the State of Washington, how would you describe the reaction of banks in a community when they are threatened or face the [492] possibility of new entry?

A That is hard to answer as a generality because each situation differs of course, because of the environmental circumstances, the personalities of the institutions involved, but I would say, if I had to answer the question generally, that the attitude could be expected to be somewhat defensive, and apprehensive, because of the uncertainties of doing business in an environment involving a new competitor or potential new competitor, and perhaps defensive in the sense that no one will readily admit that he is not doing the job, or that anyone else is needed to do the job that he is there to do.

Q In this regard, what kind of assertions are generally made in opposing new charters or branch applications as the case may be, by banks that are in the community where the application has been made?

A That the community is adequately served by the existing facilities and by existing institutions.

Q And why do they make that assertion?

A I would say because they believe in good faith that they can adequately accommodate the banking needs of the community, or needs for financial services.

Q Well, do they do it also because they realize that if they don't serve the community, that the regulator [493] will permit entry?

A Oh, I would agree that that would be a correct conclusion. If bank management felt that it was not serving the community, it would probably expect discontent in the community that would eventually result in efforts to establish a new bank, or to attract a new branch if the community, as in the State of Washington, does not have banking facilities, so it could be the loca-

tion of a branch of a bank having a head office in another county. An instance in point, the McCleary State Bank resulted from the dissatisfaction of residents of that community, business people in that small community, McCleary is a small town west of Olympia, dissatisfaction with their not having a bank, and they made numerous visitations to my office when I was in Olympia, and I encouraged them to talk to existing banks which had the potential, the ability to establish a branch, because of the size of McCleary, and apparently they were not able to interest a Seattle bank or an Olympia bank in establishing a branch there, and finally they persuaded us to allow a bank, or rather a new bank to be established with what was very minimal capital, I think $140,000.

Q How important is the threat of entry as a stimulant to banks in the community to encourage those banks to [494] serve that community well?

A Well I believe I just answered that, that that would be an incentive, if such an incentive were needed, to provide adequate service, adequate banking service in the community.

Q Do you believe that that incentive or that stimulant serves an important role in markets in the State of Washington, or in communities in the State of Washington?

A Yes, in certain communities I would agree.

Q What communities do you mean by that?

A I had in mind, perhaps more, in certain communities that would not be as significant a factor. I mean specifically in remote small communities that have perhaps a small unit bank.

Q Do you mean in other words in communities where there isn't a great incentive for another bank to enter?

A Yes, I think in other words, the economic realities would dictate whether an existing bank would have to be apprehensive about not giving adequate service. The reason I didn't want to be specific is because if I mention some small bank in Eastern Washington, say, I could be singling that bank out unfairly.

Q Would a bank in a community that is growing, or a bank in a community that is growing, more strongly

than a bank in a community that is not growing, or growing [495] more slowly.

A Yes, this is probably what I should have said, in a community that tends to be stagnant, or without significant growth prospects, there would not be that strong incentive. In a growth area, definitely there would be such an incentive. I could add that in a growth area, even the most conscientious bank in terms of providing service, could still expect, with continued growth, that eventually there would be interest in establishing a new bank, because it might be demonstrated that there would be, to use the expression, room for a new bank.

Q So you are differentiating between two different incentives, as I understand it, the incentive of growth to enter, and the incentive of lack of service?

A Yes.

Q They could exist together, and they could exist separately, is that right?

A Yes, I suppose that in a community that did not have strong growth prospects, that nevertheless had a modest prospect for growth, that the absence of adequate service could be a spur for an effort to establish a new bank, even though that new bank might not have the strong prospects that it would be another community with stronger growth prospects. Perhaps if I could be [496] more specific, the Yakima area appeared, during the time I was supervisor, to have a very strong growth prospect, so that area would typify the situation where regardless of the service, there would be eventually an effort to establish a new bank, or new banks.

Q Government's Exhibit No. C, Mr. MacMurray, is before you. I would ask you just to look that over briefly and familiarize yourself with it.

MR. TORRE: Your Honor, I will ask the Court's indulgence. Due to Mr. MacMurray's late arrival, he hasn't had an opportunity to examine this as carefully as he would like to have.

A I really don't see how I can become familiar with this document, it is very extensive.

Q Well, perhaps I could summarize it for you, it is a

letter written by the Washington Trust Bank to I believe your successor, Mr. R. D. Carrell.

A Yes, it is a seven-page letter.

Q And it is protesting the granting of a charter to the American Commercial Bank. Did you have any involvement in the proceeding described in there, that there was a hearing in Spokane, specifically?

A Yes, I was supervisor of banking when the application was filed for American Commercial Bank, and I was involved in the processing of that application, the [497] assignment of examiners to make the usual investigation. I don't recall, but I assume it was a joint investigation with examiners assigned by the Federal Deposit Insurance Corporation from San Francisco. I would just say at the outset that this is as complete a protest as I have ever seen. Well, it is dated February 1, 1965, so I did not see this.

Q Are you aware of the factual background of that protest?

A That the Washington Trust Bank was opposed to the application?

Q Yes.

A Oh, yes.

Q Is this an example of the situation, perhaps an extreme form of the reaction of a bank or banks in a community to threatened new entry?

A Well, I would say this is an extreme example. As I say, I have never in my memory seen as extensive a protest statement.

Q Why do you think they were particularly concerned, in view of the fact that there had been new entry by the First National Bank of Spokane?

MR. MOEN: I am going to object to the form of the question. How can he possibly know what they had in their minds?

[498] MR. HARTMAN: I would join in that objection.

THE COURT: Sustained.

Q When did the National Bank of Spokane enter the City of Spokane, or when was it chartered?

A I brought along the annual reports for the period during which I was supervisor of banking in the State of

Washington, but these do not contain, of course, the list of national bank actions. It was during the time I was supervisor. If you are referring to the bank which was established in the Davenport Hotel—

Q That is right, I believe it was established there.

THE COURT: That was a national bank, wasn't it?

THE WITNESS: Yes. I would guess around 1962, but it would be just a guess. I would have to have my recollection refreshed on that.

Q I am just searching the record here for a minute. Did that bank enter during your tenure as bank supervisor?

A It was organized and established during the period I was supervisor, as a national bank of course.

Q Do you recall whether there was any protest associated with the entry of that bank?

THE COURT: Well, that is out of his domain, isn't it?

[499] MR. TORRE: Well, he was a bank supervisor. It was a national bank but he may have been aware of the fact that banks protested the entry of a national bank.

THE WITNESS: Well, if I could just explain.

THE COURT: Yes, go ahead.

THE WITNESS: Under the arrangements of the office of the Comptroller of the Currency, the Regulator of National Banks, and the bank supervisors in the respective states, and I presume this is standard in all states, there is a notification procedure whereby an application received and filed for a new bank in a particular state, if for a national bank, would result in a notification by the Comptroller of the Currency,—now this was the procedure when I was the Supervisor of Banking,—from the Comptroller of the Currency to the State Supervisor that such an application had been received, and inviting comments. If an application were received by a state supervisor, if I received an application for a new bank in the State of Washington and filed it, I would reciprocally notify the Comptroller of the Currency,—at that time the notification went to the office of the Comptroller in Washington, D. C.,—of the

filing of the application, and would invite comments. By that means both [500] supervisory authorities, both state and national in the dual banking system, would be aware of the application received by the other authority. So I would have under this procedure have received a notification letter from the Comptroller regarding the application, and I assume that I would have notified state banks which would be concerned, which would be really only the Washington Trust Bank in Spokane, of the existence of the application. I do not recall what if any position the Washington Trust Bank took on that application. My distinct recollection of that particular new bank establishment was that it was under-capitalized, it was not in my judgment a suitable bank formation for a city the size of the City of Spokane, somewhat of an oddity, a bank officing in a hotel. Subsequently it was acquired by the National Bank of Washington. I don't think it had a very long existence.

Q (By Mr. Torre) Would you have recalled if there was a protest by the Washington Trust Bank or any other state bank of that magnitude as Exhibit C?

MR. MOEN: I object to that question because he has already answered it. He said he had no recollection.

THE COURT: Is that correct? I don't recall.

A Well I would say this, I don't recall any conversations [501] or meetings with any officers of Washington Trust Bank on that particular application. I don't recall any activity in connection with that application. That kind of activity that would have occurred would be an exchange of correspondence about it, and then possibly a letter from the office of the Supervisor of Banking in Olympia to the Comptroller of the Currency, stating objections to the establishment.

Q What in your opinion as a bank regulator is the difference between that situation and the American Commercial situation that prompted this strong protest?

MR. MOEN: If the question in his opinion as to what prompted the protest on the part of Washington Trust—

THE COURT: I think that is an improper ques-

tion. The letter speaks for itself as to why they were protesting.

Q (By Mr. Torre) Mr. MacMurray, one involved an entry by the Spokane National Bank, and the other the American Commercial Bank. Was there any difference between those two banks, in your opinion, that warranted this protest?

A Well, I can't testify specifically as to what motivated the strong attitude expressed here. I could offer this observation, that the American—

[502] MR. MOEN: I don't think it is proper to offer his observations.

THE COURT: I don't think so either, because that letter speaks for itself. It says right in there why they protested.

MR. TORRE: Okay, your Honor.

THE COURT: And anybody who would make any statement concerning the reasons that they protested—aren't we limited to the letter itself? There are a lot of things that he says in there. I didn't read it all, but I read enough of it to know some of the reasons why they protested.

Q Do you feel that a charter should have been granted to the American Commercial Bank?

A Well, I was not Supervisor of Banking when that charter was granted. It was granted, and I of course at the time it was granted had no official position on it. I saw nothing wrong with granting it. I didn't make a determination when I was Supervisor of Banking on this application—it did not reach that stage—and I did not see the full examination report. It was still in process at the time I left office.

Q When faced with the threat of entry, is the response of banks in the community greater the greater the size of the entrant, and lesser the lesser the size of the [503] entrant? In other words, if a big bank is going to enter a community, is the response a little stronger than if a small group of businessmen organize a bank in the community?

MR. HARTMAN: Your Honor, I object to the broad scope of that question, and I am not sure that an answer

to it would mean very much. I think he ought to be more specific.

MR. TORRE: Well, your Honor, I tried to be specific here, and I think I am trying to back off and be a little more general. He has had a lot of experience, your Honor, in dealing with banks and chartering and I think he can generalize from his experience.

THE COURT: Well, you are asking him if a big bank tries to come into a community is there more or less opposition to its entry than if a small bank does; is that the idea?

MR. TORRE: Yes, your Honor.

THE COURT: Oh, I will let him answer for whatever it is worth.

A Well, Mr. Torre, we are talking about new bank establishments, so I think I know what is involved here, and that would be if a properly capitalized bank with the ability to achieve its full potential is proposed, it would certainly excite more apprehension and concern [504] than a bank that would be undercapitalized as proposed, or would be in other respects a weak entrant. Now the Spokane National, as I said, was undercapitalized. That was a weak entrant in Spokane. I don't think it perhaps was taken that seriously. The American Commercial Bank was capitalized much more realistically, and represented a serious bank proposal, and so obviously would be taken more seriously, and I think obviously it motivated Washington Trust's concern.

[505] Q I will ask you to turn for a moment to that letter in front of you and I direct your attention to the second indented paragraph on that first page. I would ask you what significance you attach to that paragraph?

A The letter of February 1, 1965?

Q Right, the paragraph beginning "It appears that the only purpose of independent bank formation in the Spokane metropolitan".

A Would you like to ask your question?

Q Yes. In light of what you have just said about the lack of fear of the Spokane National Bank organization and other capitalization and it wasn't regarded as a real threat and the greater threat of a more capable institu-

tion was—and I ask you what significance do you attach to that paragraph that I have just directed your attention to?

A I don't see any relationship. This paragraph says that the American Commercial Bank was being formed to be sold out rather than to be maintained in existence as an independent bank.

Q Would that indicate to you that they were apprehensive of a larger and more powerful institution behind this?

A I see what you mean. Well, that could be a cause for concern for thinking into the future. In other words, the threat would not be just of a sufficiently [506] capitalized bank being able to compete effectively as it grew or eventually after it had grown to sufficient size, but the threat of being replaced by an existing bank with larger abilities, yes.

Q Did you know that the American Commercial Bank did grow—

THE REPORTER: I didn't hear that.

MR. TORRE: (Continuing) Did you know that the American Commercial Bank did grow to significant size?

A I have not followed the growth of the American Commercial Bank. The only bank that I have chartered that sends me copies of their published reports is the bank in Yakima and I am quite proud of their growth.

THE COURT: Well, tell him how much deposits they have and what they think about it in the Spokane market. That's the best question at this time.

MR. TORRE: Well, the American Commercial Bank as of December 30, 1972 had total assets of 19 million dollars and it was operating four branch offices. How do you assess that growth?

THE COURT: Just ask him what percentage of deposits they have, the percentage, that would be more helpful.

Q (By Mr. Torre) As of June 30, 1972 they had 15 million, 15.7 million in deposits, which was 3.1 per cent of the [507] Spokane metropolitan area banking deposits.

A I am impressed, first of all, that they still exist in light of the second paragraph that we just discussed, and a 20 million dollar bank in the State of Washington is a

bank of fair size and they have a long way to go yet, obviously. But, with four branches, you say?

Q Yes, sir.

A (Continuing) Obviously the bank has been aggressive in seeking to grow.

You say 1965—seven years? The first five years of any bank's existence we are talking about. In the State of Washington which is not, of course, the State of New York or another state where huge deposits might be expected in deposit growth, the first five years, well, that's a period of infancy and I always counsel people who come into my office to discuss the possibility of starting a new bank that they should not expect a dramatic effect in the early term and certainly not such profitability that would result in dividends, and that it is a long term growth situation. So my concern was that they would last. And apparently the American Commercial Bank has lasted and they could now be on the threshold of significant growth. I don't know what their present circumstances are.

[508] Q The Spokane National Bank was acquired by the National Bank of Washington, and the National Bank of Washington subsequently merged with the Pacific National Bank. Now in light of your testimony that an acquisition by a more capable competitor might strengthen a smaller bank in the market, how do you explain the fact that the Pacific National Bank hasn't performed or done that well in the market than it has at this present time? It has at this present time 2.2 per cent of that market, 11 million dollars, and in 1968 it had 23 million dollars and in 1969 it had 11.1 million, and in 1970 it had 20 million, and had dropped down to 11.9 million, and it's now down to 11.1 million.

From your knowledge of banking in the banking community—

A (Interposing) Can you repeat those figures for me, please? Are those deposits you are talking about, for that branch?

Q For those branches in that area.

A Are we talking about the Pacific National Bank of Washington?

Q Well, just a moment, I think it will help you to look at these. Four branches.

A They only have the one, do they not?

Q Excuse me, they have two branches.

[509] A In the Spokane area? Well, I am not acquainted with the other branch location apparently.

THE COURT: Well, they don't have that one in the hotel any more. They moved out. I walked by that corner when I was over in Spokane.

MR. TORRE: They've got a nice goodlooking building on Sprague, I don't know what the name of the street is.

Q Now, if you would look at the bottom of Exhibit No. A-55, the bottom line I would say—and the Pacific National Bank—and just observe their deposit record in the past seven years. In light of what you said a moment ago about a new bank being acquired by a larger institution with more strength and the fears that that firm had because of that, how do you explain that the bank did not strengthen the Spokane National Bank that much apparently?

MR. HARTMAN: I object. I don't think he is qualified to answer that question.

THE COURT: What factors are present—what your question is is as to how he explains why they don't have any more deposits?

MR. TORRE: Right.

THE COURT: Well, really, he can try if he can, if he wants to try.

[510] A This is in the period from 1966 to 1972 for the National Bank of Washington in the Spokane metropolitan area?

THE COURT: Why don't you tell us why you think they haven't done better than Washington?

MR. TORRE: What factors do you know in general, the Pacific National Bank—Washington's merger with the Bank of Washington and the Pacific National Bank in general and et cetera?

THE WITNESS: It would help me if I knew where else they were located or where else they had an office in the Spokane metropolitan area, that is, the Pacific National Bank of Washington. I realize they have one branch which—



Q (Interposing) Well, the branch, I believe, is on the outskirts.

THE COURT: Out by the Northtown Shopping Center, is that where it is?

MR. MOEN: I believe by the Whitworth College, your Honor.

THE COURT: Well, that's just beyond the Northtown Shopping Center, out to Whitworth.

THE WITNESS: That's the branch of the Spokane National Bank before it merged?

MR. TORRE: Yes.

THE WITNESS: Well, that explains it then [511] because there would not have been the legal opportunity to the National Bank of Washington to have branched otherwise.

Q (By Mr. Torre) Right. And they acquired the bank and—

A (Continuing) With two offices so it was all Spokane National Bank.

Q Right.

A If this document which was put before me were in my office I would think there was a typographical error. From 1966 through 1969 and 1970 and then '71 there is such a variation from 23 million in '68 to 11 million in 1969 and then 20 million in 1970 and to 11 million in 1971. Sometimes the expression is used "window dressing" with respect to what banks put on their statements when they know that maybe they are going to be called on to disclose their statement and so forth, their footings publicly, but it would appear that the deposits were moved in and out. I can't believe that there was a loss of deposits from 1968 to 1969 because of dissatisfaction with the branch, and then in just one year regaining most of the loss and then losing it again.

Q My question is, does that perhaps indicate to you or do you have any knowledge of the gist of the situation with the Pacific National Bank and the National Bank [512] of Washington that would indicate to you what the cause of those fluctuations were?

A This would be purely an opinion because of course I

Q You have been in the banking community, you have did not regulate national banks.

knowledge of banks in this community, and broadly what is your opinion based on that?

MR. MOEN: Well knowledge isn't something to be speculated on, your Honor.

THE COURT: If he knows something I think maybe his opinion is worth more than mine and mine is worth nothing. Of course, that means it doesn't have to be worth much. I don't see how—I will let him answer if he wants to.

MR. TORRE: Well, knowledge of the merger.

THE COURT: To cause that change.

A All right, an opinion. The National Bank of Washington, unlike, for example, the Seattle-First National Bank and the National Bank of Commerce, was not represented in Eastern Washington by branches. The move of the National Bank of Washington to the Spokane area into this hotel office was a rather extreme move from the standpoint of building a base for the future.

Then obviously there was the problem of digestion, as it were, of a new posture, a statewide [513] bank where in fact they were not statewide. As I recall, they were only as far east as Ellensburg and of course Ellensburg and Yakima are not Eastern Washington, so this was an isolated branch office in the City of Spokane.

Now, subsequently, it became common knowledge on the street that the National Bank of Washington encountered problems in—well, internal problems that could have distracted them from implementing their Eastern Washington position and from my knowledge of reaction on that kind of a thing, it could have discouraged a good, or good people from being willing to join the bank, be concerned about their future with a bank that has a problem.

Q You mean management?

A Yes. So then there is a problem of a bank that doesn't want to go ahead with large plans to establish new offices, whether it can or not, unless it knows it can staff its offices.

THE COURT: Wouldn't it be more interesting if they could actually see the new building they have over there, that might be interesting.

THE WITNESS: No, I have not, your Honor.

THE COURT: Well, let's take a recess now and you can talk to these people about that new building while we are in recess.

(RECESS.)

[514] THE COURT: Now, we were starting to discuss what happened to the Pacific National Bank of Washington in Spokane, and I suggested that Mr. MacMurray has been away, and I thought he might want to know about the nice new building they had just built over there. All right, now go ahead.

Q (By Mr. Torre) Do you have any observations other than the fact that they do have the nice-looking modern building, does that mean they should be doing better in the community?

A The Pacific National Bank of Washington?

Q That is right.

A In Spokane?

Q That is right.

A Well, first I would assume that a bank of the size and the image of Pacific National Bank of Washington would not remain in the Davenport Hotel. They might even have gone into an interim office between the Davenport Hotel and this new building. I don't think buildings make banks necessarily, I would say that this indicates that in the future the Pacific National Bank of Washington will be more effective in seeking to achieve its potential in Spokane. I believe in the period from 1964, which is when I understand that the National Bank of Washington acquired the Spokane National Bank, to [515] 1972, approximately seven years, during that period there have been factors which affected the performance of the bank in that area, which were not attributable to the circumstances of the area as much as the circumstances of the bank.

Q And these circumstances are what?

A Well, the circumstances of the bank, that it was an isolated representation in Eastern Washington, to my knowledge, that made it more difficult for the bank to operate or to reach a level of effectiveness, perhaps.

Secondly, perhaps from 1970 on, the National Bank of Washington has had other problems that would have distracted it from implementing its position in Eastern Washington, problems relating to bad loans, situations that would have required full attention at home in Tacoma, and then the Seattle bank, Pacific National Bank, of course was beset by the adverse economic circumstances

in the Seattle area, especially with what was happening from Boeing from perhaps 1969 on. In common parlance, the Pacific National Bank was the Boeing bank. I believe I have even read the analysis by security analysts of what happened to Western Bancorporation stock, and one of the factors mentioned rationalizing the failure of Western Bancorporation stock to keep pace with Bank of America stock was the indigestion [516] in connection with its Washington subsidiary, and the Pacific National Bank acquisition. And of course that is further indicated by the replacement of management in Tacoma.

Q In light of what you have said with regard to the importance of the threat of entry as a stimulus to banks in the community, how important has that factor been in the Seattle-Tacoma area?

A Could you repeat the question?

Q In light of what you have said with regard to the importance of the threat of entry as a stimulus to competition in markets that feel that threat, what has been the importance of that factor in the Seattle-Tacoma area?

A Well now I would only be able to speak from my experience say prior to 1965, really.

THE COURT: That is too remote in time, Mr. Torre.

MR. TORRE: Well, I think as to time, as to this factor of threat of enty, doesn't make any difference. I mean the threat of entry is the same—

THE COURT: Well, we are talking about Seattle-Tacoma, and how do you relate that to Spokane?

MR. TORRE: Well, it is a market that has entry threatened. Every market has entry threatened, [517] it is just like any other market, your Honor and the time that the entry is threatened is really irrelevant and immaterial to the significance of that threat.

THE COURT: All right, go ahead. Now we are in Tacoma and Seattle.

A Well, I would have to go back to the time when I was a trust officer at Seattle Trust & Savings Bank.

THE COURT: How long was that, was that back in 1954?

THE WITNESS: That was 1954 through 1957, and particularly in 1957 I was present during conversations with senior officers of Seattle Trust & Savings Bank, and

there was discussion of concern about protection of the Seattle area—King County area really, because of the prohibitions of Washington law respecting county-wide branching—concerned about protecting Seattle and King County from being entered by banks which were in existence, but did not then have locations in King County or in the Seattle area, and principally this would be the Seattle area, not the remote areas of King County which would not support banking facilities.

Q What banks were they concerned about?

A Well, the most extreme concern, and this verged upon fears more than concern, the most extreme concern was that, somehow or other, California banking interests would [518] gain entry in the Seattle banking market, and of course the name Bank of America would come into this as typifying an aggressive California bank.

Q Were they in any way fearful of any bank headquartering in Tacoma?

A Well, I was getting to this. There appeared to be a sort of understanding, or at least a prevailing balance whereby Seattle banks did not go to Tacoma, Tacoma banks did not go to Seattle. I mean by that that even if an opportunity were to be presented, that a Seattle bank would not move into Tacoma through acquisition, and a Tacoma bank—at that time we were only talking about, or the only banks involved in Tacoma would have been the National Bank of Washington and the Puget Sound National Bank, with ability to move into what was considered another market. Perhaps that is the basis of this. There was the consideration of these areas not as Seattle-Tacoma, but as two different banking markets, and there was seeming respect for this balance, and I recall well that the Puget Sound National Bank established a branch at Midway. I think at the time there might have been a new national bank established which they quickly acquired as a branch, just within King County, and that was regarded—now my only experience, I had no contact with national banks, my [519] only contact was with Seattle Trust & Savings Bank—that was regarded as an outrageous action. I remember Mr. Baillargeon saying—

MR. MOEN: I am going to object to this, your Honor. What conceivable difference would it make what Mr. Baillargeon thinks of the trust business in Seattle,

whether it is getting competition from California banks. This is entirely speculation, it is hearsay, and can't have possibly any probative value in this case.

MR. TORRE: Your Honor, if I could respond? It is exemplary again of the effect upon banks in markets where the threat of entry is present, and their reaction to that threat of entry.

MR. MOEN: Whose reaction? He said he sat in a meeting and heard somebody talking about it. It is the rankest kind of hearsay. It doesn't prove a thing.

THE COURT: Well, this is 1954 to 1957. The fact of the matter is that since that time Seattle-First is in Tacoma, Peoples is in Tacoma, times have changed. I don't know what bearing this has on the ultimate,—I always go to that old statement, what bearing does this have on the ultimate decision that I am going to make concerning the problem in Spokane. Do you think that this goes to your wings theory, is [520] that what you are talking about?

MR. TORRE: I think it does, yes, your Honor.

THE COURT: It goes to the wings theory. Now I don't know how you pronounce that French name, I have read it a number of times, Cebert Baillargeon, I guess it is, talked about the Puget Sound National Bank establishing its branch at Midway.

MR. TORRE: Well, I would submit that is probative, your Honor, to a banker's awareness of the fact that his banking area was being impinged upon by a bank outside that market.

THE COURT: Well, what is Seattle Trust & Savings, is that a commercial bank?

MR. TORRE: Yes, your Honor. It is a state commercial bank.

MR. MOEN: Well, if that is what he is trying to prove, your Honor, I submit he can't prove it by this witness. He is going to have to bring in some evidence of this. This witness is qualified as an expert, and he is just giving opinion evidence.

THE COURT: Well, that is right and now you have switched him over to hearsay. What he is telling me is conversations that occurred between—

MR. TORRE: He is giving—

THE COURT: Well, you go ahead and tell me.

[521] MR. TORRE: No, your Honor, I am sorry. I have a bad habit of doing that, and I apologize for it.

THE COURT: Well, it doesn't get you in as much trouble in this court as it does in some, does it.

MR. TORRE: I am sorry, your Honor.

THE COURT: Well, the problem is, as Mr. Moen has stated it, and accurately, I am to sit here and evaluate statements by Mr. MacMurray about what the attitudes of the officers of the Seattle Trust and Savings Bank were in 1954, to '57, concerning what some Tacoma bank did with a branch at Midway, as it bears on the question in Spokane, and the wings theory. That is what you want me to do?

MR. TORRE: That is right, your Honor.

THE COURT: All right, I will let him answer as to what his opinion is, or what they said and what it meant to him, and all the rest of it. Let's just throw it in, we might as well.

MR. TORRE: Thank you, your Honor.

THE COURT Whatever I think of it is another matter, but I will just let you put it in anyhow.

MR. TORRE: Thank you very much, your Honor.

THE COURT: Well, you don't have to thank me, Mr. Torre. Mr. Moen doesn't thank me.

MR. MOEN: May the record show that I have a [522] continuing objection to this, your Honor.

THE COURT: And I think your objection is well taken, Mr. Moen, and I am probably in error in letting him do it, but I would just like to expedite it and get it in and let's get on with the next matter. All right, go ahead.

THE WITNESS: May I continue?

THE COURT: Yes, go ahead. You were saying now that Cebert Baillargeon was mad because Puget Sound National Bank got a branch out at Midway.

THE WITNESS: It is not precisely what I was going to say, your Honor and I thank you for the opportunity to make myself clear. I certainly wouldn't want to leave any adverse impression because of a partial statement on Cebert Baillargeon.

The reason I mentioned Cebert Baillargeon is that Cebert Baillargeon was a very prominent—

THE COURT: Well, let's get right down to it. That's what I want to do, get right down to things.

THE WITNESS That is what I wanted to do, your Honor.

THE COURT: Well, I understand that, but let's get right down to the situation. As I understand your testimony, there was an understanding that Puget Sound would not go into Seattle, and N B of W wouldn't go [523] into Seattle, and Seattle-First wouldn't come into Tacoma, and N B of C wouldn't come into Tacoma, and Peoples wouldn't come into Tacoma, and Pacific National wouldn't come into Tacoma. Now, is that what you are telling me?

THE WITNESS: Well, your Honor—

THE COURT: That is what you said—

THE WITNESS: What I was saying is that in 1957, and it is 1957 that I am basing this on, and it is not opinion, it is factaul, that because Cebert Baillargeon was such a highly respected and important banker in the City of Seattle, one of just a few who occupied his level of influence—

THE COURT: Was he more influential, for example, than Lawrence Arnold of the Seattle-First at that time?

THE WITNESS: He was at that level of influence.

THE COURT: All right, I just wanted to be sure where the level of influences are here.

THE WITNESS: He was at the top level of influence as a banker in Seattle, and I would like to say just as an aside here that Cebert Baillargeon, as everyone knows in the banking community, was a very outspoken person with strong opinions, so he would have [524] perhaps expressed himself more vigorously about a happening such as the Puget Sound National Bank's branch, or a sponsorship of a bank to convert into a branch across the line at Midway into King County, and therefore he would have regarded it as outrageous, and would have so stated. Because of his prominence, I gained the impression that this was the attitude of the influential Seattle bankers, the Seattle bankers who would control the policies of their own institution.

THE COURT: Well, let me ask a question now, as long as you have stated that. Then Mr. Odlin of the

Puget Sound National at that time had breached a great understanding, is that what you are telling me, by establishing that branch over there?

THE WITNESS Yes, that was the conclusion.

THE COURT: Then would you further say, and I have heard this testimony in this case, that this so-called fraternal attitude that bankers allegedly had toward each other didn't apply in this particular instance, when Mr. Odlin went so far as to establish a branch out there? I have heard they had this fraternal attitude, but this would be an exception to it, would you say?

MR. TORRE: Your Honor—

THE COURT: Just a minute, Mr. Torre, I have [525] asked the question. If you want to object to it, you may.

MR. TORRE: No, your Honor, I don't want to object to it, but Mr. MacMurray hasn't heard the testimony that you have heard here.

THE COURT: Well, I am telling him what the testimony was here.

THE WITNESS: Well, I would say, your Honor, that the fraternal attitude was enabled by the fact that they didn't have to compete with each other across the—

THE COURT: Well no, I didn't ask you that. I just asked you whether that wasn't a breach of it, or was it an exception to the rules, by establishing that branch out there in Midway.

THE WITNESS: It would have tried the fraternal attitude, I believe.

THE COURT: All right, go to the next question.

Q (By Mr. Torre) At that time was there a different community of bankers in Tacoma and one in Seattle?

A Yes. Now I am talking about 1957, and I was trying to get to my later experiences.

THE COURT: Well, that should suggest a question to you. What were your later experiences?

Q (By Mr. Torre) What were your later experiences, yes.

[526] A If it is all right just for me to proceed, thereafter, there was not an entry by a Tacoma bank into Seattle, or into King County, or a King County bank into Pierce County, to my recollection, that is, and there was not even threat of such entry until the National Bank of

Washington acquired an independent bank south of Everett, which placed the National Bank of Washington then on both sides of King County, and was threatening to King County. The actual entry of a Tacoma bank into Seattle, or a Seattle bank into Tacoma first started—I don't know that there is any Seattle bank—pardon me, any Tacoma banks yet in Seattle, because of course the merger of the National Bank of Washington with Pacific National resulted in Pacific National being the head office, with the Seattle bank in effect in Tacoma—started with the acquisition of the Central Bank, a Tacoma bank, by Peoples National Bank. Central Bank was a small state bank that had not performed as well as it could have in the Tacoma marketing area, and was amenable to acquisition by another bank, and was acquired by Peoples National Bank. That was the first entry of a Seattle bank into Tacoma.

THE COURT: When did that occur?

THE WITNESS: Approximately—

THE COURT: That was Mr. Borgaize, that sold his [527] bank.

THE WITNESS: Yes, Bob Borgaize. I would say approximately 1965 but I can't state that factually.

THE COURT: All right, go ahead.

Q (By Mr. Torre) That was the acquisition of July 28, 1965, that is Government's Exhibit A-45.

A That was the first time a Seattle bank actually entered, to use that expression, the City of Tacoma. So on the basis of that occurrence, I would not be able to say that there was any community or concert of agreement in Seattle that was being observed, on the part of Seattle bankers, not to go into Tacoma.

MR. MOEN: Pardon me, could I have the reporter repeat that answer?

(Answer repeated by the reporter.)

Q (By Mr. Torre) That was at that time, is that correct?

A 1965.

Q And subsequently the Seattle-First National Bank has entered?

A Acquiring the Bank of Tacoma, which would have

been in 1968 or 1969. And of course the Pacific National Bank and the National Bank of Washington are now merged, so there is substantial representation of Seattle banks in Tacoma at this time.

[528] Q What is your opinion as to the effects of competition, new competition in banking markets?

A One effect, predictable effect, would be to heighten the efforts of existing banks to serve and perform.

Q Do you have any examples of that from your experience as a bank regulator?

A I would say that it was typical of a situation in which a new bank properly capitalized, in other words, a substantial new entrant in a banking market would confront existing banks. The City of Yakima would have been such an instance, the City of Everett would have been such an instance, the City of Anacortes such an instance. Now, these are all situations in which banks were chartered by the State of Washington during the time I was Supervisor of Banking.

Q Referring for a moment to the situation of the acquisition of the Spokane National Bank, do you feel that if that bank were acquired by the National Bank of Commerce, for example, that it would have done better than if it had been acquired by the Pacific National Bank of Washington at that time; and if so, why do you feel that way?

A Well, without seeking to reflect on the National Bank of Washington, I think the National Bank of Commerce was at that time better able to do the job of performing in [529] the Spokane market.

Q Would the fact that it is in many of the counties in Eastern Washington surrounding Spokane have any significance?

A This is one significant factor prompting my conclusion, yes.

Q Why is that?

A As I explained before, Pacific National Bank or—I should say the National Bank of Washington was without a base in Eastern Washington and the Spokane offices were isolated. The National Bank of Commerce would have been simply implementing existing representation and the National Bank of Washington—pardon me, the

National Bank of Commerce had always had a reputation of quality management and of the ability to get a job done effectively, and of course it was of a much greater size—at that time.

Q I direct your attention to Government Exhibit No. A-2 and the beginning of that exhibit that is in front of you. Looking at the list of banks, looking that over, which of those banks in size would you consider medium sized or middle sized banks of significance in the State of Washington?

THE COURT: A-2?

MR. TORRE: Yes, your Honor.

[530] THE COURT: Do you have that?

THE CLERK: I don't have A-2.

THE COURT: Maybe I have it. All right, I have it.

A Well, probably the largest—did you say middle sized, medium sized?

Q Medium sized, large sized—? How do you understand that term?

THE COURT: Well,—

Q How do you define a middle sized bank?

THE COURT: You know, Counsel, that's almost an insult to have a witness tell me what is a medium sized bank in the state as contrasted to a large bank and a small bank. I can read, too. That's all I would have to do, is just read it and look, isn't it?

MR. TORRE: Well, maybe there should be—

THE COURT: Well, maybe to help me out, maybe I'm wrong, tell me what a small bank is and a medium sized bank is and a large bank is, is what he is asking.

MR. TORRE: We are using a term that's a vague description, your Honor.

THE COURT: I know it. I just want him to tell me.

A Well, in my opinion the Puget Sound National Bank would [531] be the largest of the medium sized banks and its size would also have to do with the extent of geographical—or the geographical extent of the bank. Puget Sound National Bank is the first of the banks on the list here—pardon me—yes. Well, you're treating Washington Bancshares as representing both the Old National Bank and the First National Bank?

Q Yes.

A So it goes from Puget Sound Bank down to, well, we were proud of the banks and—

THE COURT: I don't care about that.

A Well, a small bank in Kitsap County.

THE COURT: Well, tell me what you think a large bank is and a small bank, just tell me whether it's medium, large or small.

Q Where would you put the line on those banks?

A Well, I hesitate to draw a line but as I say I think the, I hesitate to draw the line too high but I think the Kitsap County Bank was for our purposes in the state banking system considered as a medium sized bank because we had many banks, particularly the farm banks and small banks with less than 5 million dollars placed in them.

THE COURT: He hasn't answered the question. We want to know what a medium sized bank is and what a large bank is.

[532] A Well, I'd say from 25 million up to 250 million.

THE COURT: That's medium sized?

THE WITNESS: From my standpoint in Washington.

THE COURT: Above that is larger and below that is smaller?

THE WITNESS: Yes.

Q In your opinion what is the significance of such middle sized or medium sized banks that have limited regional operations, and are localized?

THE COURT: What is that?

MR. TORRE: What is the competitive significance of such banks?

A I believe that such banks can compete effectively in their areas because they are of sufficient size and sufficiently capitalized to have adequate management and to make appropriate correspondent arrangements to handle overlines and do the lending job in their communities.

Q Now I ask you to look at Government Exhibit No. M for identification and I direct your attention to the third page of the exhibit marked for identification M-1 and the paragraph beginning—

A Page 3?

Q Yes. Page 3, the paragraph at the beginning as to

the bank's viability, and that is the second paragraph from [533] the bottom. That speaks of that bank viability being the Washington Trust Bank. Would you read that paragraph as to the bank's viability? Read it to yourself.

A Oh, I see.

Q Would you agree with that opinion?

A By all means, yes.

THE COURT: Point that out to me. I was reading something else at the time you were reading it.

MR. TORRE: That is Exhibit M-1 for identification, page 3 thereof, the second paragraph from the bottom, and again it is on the bank's viability.

Q Now I direct your attention to Exhibit M-2 which is succeeding there and I direct your attention to pages 7 and 8 thereof, the paragraph beginning at the bottom of the page headed "Growth in New Building".

THE COURT: What is that now?

MR. TORRE: Page 7 of Exhibit M-2, it begins at the bottom and ends just before the subsection entitled "New Building".

Q Would you read that to yourself, Mr. MacMurray?

MR. TORRE: If I might identify these documents, your Honor, they are both consulting reports done for the Washington Trust Bank by a consultant hired by the bank.

[534] THE WITNESS: How far did you wish me to go?

MR. TORRE: Just down to the first—well, the first quarter of the page.

THE WITNESS: The end of the paragraph "Washington Trust Bank, and all things considered," and so forth and so on?

MR. TORRE: Yes, to the end of the paragraph. I just want you to refresh or update your knowledge of this as far as the size of the bank is concerned.

And Government's Exhibit No. A-55 and observe the deposit growth of the Washington Trust Bank since your departure from the state.

THE WITNESS: I didn't depart from the state.

MR. TORRE: Well, departed from the office of Supervisor.

THE WITNESS: Well, from employment.



Q (By Mr. Torre) With that in mind would you agree with the statement contained in Exhibit No. M-2 for identification, the one you just read?

A Well, I see in Exhibit A-55 Washington Trust Bank had continuous gains in deposits from 63 million plus at the year end 1966 to 95 million plus at the year ending 1971, and the year ending 1971, that would be a five-year period, and then to have leveled off for six months of 1972. Actually, a few dollars decline in deposits [535] in this six-month period, which could be a seasonal consideration, but for purposes of comparison on a year end basis, the growth from 63 million to 95 million, 30 million growth, well, more than 50% growth, that is in five years, is most impressive and I note that this document assembled here is Exhibit No. M-1, these documents apparently are—

Q Nos. 1 and 2.

A Yes, 1 and 2. In other words, these are two exhibits?

Q Yes.

A M-1 and M-2 are based upon the bank situation, the Washington Trust Bank situation in 1970 when they achieved deposit levels of, had achieved deposit levels of 87 million plus, close to 50% again, and on the basis of that knowledge I would agree, agree with the statement in Exhibit No. M-2 on page 7, with the contents of the paragraph of the exhibit. But I am puzzled by the statement in any event that the Washintgon Trust Bank, all things considered, appears to have outgrown the potential of Spokane, and so forth. If that means that the Washington Trust Bank should not stay fenced in in Spokane, I would agree, I have always agreed with that.

Q Do you feel that it has the ability to expand in the metropolitan area?

[536] A Well, that's what the paragraph is saying, I believe, and I would certainly concur at this time in light of the figures that I have seen here as to the deposit growth and in light of what appears to have been continual renewal of bank management to enable such expansion. It was my opinion ten years ago that Washing-

ton Trust Bank had potential to expand outside of Spokane.

[537] Q Well, they haven't within the last ten years expanded, they haven't expanded in the past ten years beyond that area; do you know of any reason why they have not, why they have not expanded?

A Why they have not expanded?

Q Yes. Can you give us any reasons why they have not expanded in the past ten years?

A Well, in the past ten years,—I haven't had any acquaintance with the bank, any acquaintance with the bank that would enable me to have an opinion since 1965. Prior to that time I had the opinion that the bank was simply too conservative and failed to recognize the realities of modern, the modern realities of the need to expand in light of our state law permitting statewide branching; and probably there was a stubbornness on the part of the bank's senior management ten years ago about simply staying in Spokane and doing a good job there with selected customers.

THE COURT: Now, counsel, you know it and he's looked into the management of the Spokane area and why they didn't expand and he says they were just stubborn about it and so forth. What credence or credibility am I going to give that kind? They could have so many reasons for not wanting to do these things and you want me to accept that as a [538] reason why they didn't?

MR. TORRE: Well, psychoanalyzing your Honor—

THE COURT: Well, that's what he's doing, you know when you start talking about what affects a man's judgment in the operation of a business or of the board of directors in making these casual observations is the rankest kind of speculation. I want to let you know that's the way I feel, that it's the rankest kind of speculation as to what they had in mind.

MR. TORRE: Do you have any basis, any concrete basis for making that speculation?

THE COURT: Well, I don't know what a concrete basis for speculating is—I don't know—

MR. TORRE: Well, any conversations he may have had with management of the Washington Trust Bank.

THE WITNESS: I was not making any speculation.

As a supervisor of banks I sought to be aware of the attitudes of significant banks and the Washington Trust Bank was a significant bank—state bank—in Eastern Washington. It was the bank that I constantly thought of in terms of problems that would come up in Eastern Washington and I well remember one situation where a bank had to give up as an independent bank because of I believe, health reasons on the part of the president of the bank and because of the absence of anyone to carry on.

[539] It was a bank sufficiently close to Spokane that I believed the Washintgon Trust Bank was a logical bank to step in and rescue the situation.

MR. TORRE: And what bank was that and what community was it in?

A Ritsville State Bank, and that was my first impression of the unwillingness of Washington Trust Bank to go outside of the immediate, well, outside the City of Spokane.

Q Do you have any area in mind that was within, what you believe was within the sphere of influence of this Washington Trust Bank that it could expand into, for example, Ritsville, or was it beyond Ritsville or was it north or south of Spokane?

THE COURT: What are you talking about now?

MR. TORRE: Well, he thought that the Washington Trust Bank was the logical bank to go into Ritsville.

THE COURT: That's what I understood him to say.

MR. TORRE: And he thought it was the most significant bank in Eastern Washington.

THE COURT: Why should a state supervisor of banking do anything to try and get a bank like the Washington Trust to take over other banks; that is amazing, that is an amazing thing. I will recess for now and come back at 1:30—I can't understand that.

(Noon Recess)

[540] AFTERNOON SESSION

1:30 o'clock p.m.

THE COURT: I think that the last question and answer that Mr. MacMurray gave, I am going to restate. I am going to restate it as I understand it. He was asked to express his opinion concerning the management of the Washington Trust Bank with regard to expansion, and he expressed the opinion that they were stubborn, and he gave the illustration of the fact that there was a bank in Ritsville, Washington that was available because of management health problems and that Washington Trust Bank declined to enter into the Ritsville area and acquire this bank. Isn't that what he said?

MR. TORRE: I think that was the substance of it, yes.

THE COURT: Well, I am going to strike that question and answer from the record because I just don't think it is any more than sheer speculation and I will tell you why. There could be a multitude of reasons why the Washington Trust Bank would not want to go into Ritsville and acquire the Ritsville bank. The directors of the bank could feel that they would be better served by concentrating their efforts in the City of Spokane, improving their banking facilities, [541] the Ritsville bank might not have looked too good to them from the standpoint of profitability, if you want to use that term, that seems to be a common term, they could have had many many reasons, so to say it was by pure stubbornness is in my judgment rank speculation. So I just disregard the question and the answer, and that's the way we stand. And one more thing, they may have been a little stubborn if you want to use that word, but the next thing is that we refer to the increase in the bank's deposits, so they can't be too bad in the management of their institution. So that flies directly in the face of their lack of shall we say expertise in the field. They have apparently established that they are pretty good operators. All right, let's go to the next area now. That is my reaction to it.

Q By Mr. Torre) Just two more questions and then

I think we can finish up. Mr. McMurray, before you is Government Exhibit O.

THE COURT: Let me see it.

Q I direct your attention to sub Exhibit O-20. Looking at that map entitled Inland Empire, Spokane's regional relationship, and directing your attention to the Washington State portion thereof, in your opinion does the area denominate primary area approximately represent [542] the area that you as commissioner of banking from your observation of the Washington Trust Bank, consider the potential regional trade area for the Washington Trust Bank?

THE COURT: If I understand your question, that is the whole area?

MR. TORRE: The primary area. Those are the horizontal lines, your Honor.

THE COURT: All right.

A Disregarding the state boundary.

Q No, regarding the state boundary, of course since they can't expand into Idaho.

A They might do business with borrowers or depositors in Idaho for example, but obviously they can't have an office across that state boundary, or could not. My answer now is supposed to be as of the present time, or as of the period when I was supervisor of banking?

[543] Q As of the period when you were State Supervisor of Banking?

A Well, I was called upon to have some awareness of the geographic realities in the State of Washington as well as the attitudes and postures of various bankers who set policies for state banks. I was aware of the fact that, for example, there was some traditional relationship between even Walla Walla County and Spokane. And there was some sense of community of interest extending as far as Franklin and Benton Counties which appear in the secondary areas, because of the Tri-Cities, Pasco, Kennewick and Richland, and for example, some apprehension—this was prior to 1960 when Spokane was experiencing economic problems—that because of some of the characteristics of this Tri-City area or essentially that Tri-City, so-called, as an economic community, would replace Spokane as the leading industrial community or

commercial community in Eastern Washington, and which of course has not occurred and it is not about to occur in the immediate future.

THE COURT: Would you care to restate your question again and we can pinpoint this. Well, his question was, did you consider the primary areas, the general trading area for banking industry in the City of Spokane. Is that the idea?

[544] MR. TORRE: I'll restate it, your Honor.

Q In your opinion does the area denominated as the primary area approximately represent the potential regional trade area for the Washington Trust Bank?

A Washington Trust Bank?

THE COURT: The primary area. That's the ones with the horizontal lines—does it in your opinion represent the potential trading area for the Washington Trust Bank?

A I would have to respond,—certainly the areas including all of Spokane County, probably most of Whitman County, substantial portions of Adams County, Lincoln County and portions of Ferry County and of Stevens and Pend Orielle—yes, that would be considered a Spokane marketing area.

Q In your opinion what would be the effect of the elimination of Washington Trust as an independent Eastern Washington state bank by merging with the N B of C?

A Again, I haven't had recent acquaintance but assuming that Washington Trust Bank has maintained its position of preeminence, as certainly indicated in the deposit gain figures, I would say that a very significant independent bank would be eliminated from existence, a bank which would have the potential of expanding into this primary area as it might have legal opportunity to [545] do or as the economic realities would indicate to be desirable.

Q Do you then think that it could expand by the acquisition of smaller banks?

A Yes.

THE COURT: Well, before we leave that let's go over this county by county. What is the county seat of Lincoln County—Davenport? I'm just asking, Mr. Mac-

Murray. Is that the county seat of Lincoln County? Davenport?

THE WITNESS: I am not certain, your Honor.

THE COURT: Well, it is the county seat of Lincoln County; and where would it expand in Lincoln County? As of now, and we'll just go over it county by county.

THE WITNESS: Your Honor, I have no present knowledge of where it might expand. I have had no recent contacts there.

THE COURT: Well, let's get down to the practical aspects of it. You see, theoretically is one thing and practicality is another thing. I am asking you the question of—

MR. TORRE: (Interposing) I think I can expedite the answer to the question, your Honor, by referring to an exhibit that lists the banks in the counties that [546] you named.

THE COURT: Well, I just want to test his knowledge of the area without reference to that, without reference to—Now, let's see, Lincoln County, Davenport is the county seat, and then there is Wilbur, is there not?

THE WITNESS: Yes.

THE COURT: And Edwall. What other communities of any size are there that would warrant the start of a bank or banks, what others are there in Lincoln County?

THE WITNESS: Your Honor, I was not responding to the near term and I was not thinking of Washington Trust having to make a decision within the near future but it could be for a long term period.

THE COURT: All right. What do they do in Lincoln County, what's the main thing they do there?

THE WITNESS: Farming.

THE COURT: Wheat, particularly, isn't it? And what do you think of the prospective—could you give us an opinion for population growth in that county as far as the main source of livelihood in the wheat area?

THE WITNESS: Your Honor, I have no opinion on that, I don't have sufficient knowledge of it or the [547] economic circumstances.

MR. TORRE: I would ask your Honor to take judicial notice that the United States at the present time

is exporting large amounts of wheat and grain to the Soviet Union and China and that will have a vast impact upon those farmers.

THE COURT: Well, if I have to take judicial notice of that I will have to take judicial notice that farms that used to have families living on them now don't have any more because it is necessary for the modern wheat farmer to have larger acreages, in other words, to make it profitable; therefore, there is a declining population in the county. Look at the exhibit and it will show that. Take a look at Lincoln County and it will show that; see what their population growth has been over the past ten years or twenty years, if you wish. Let's get on to the next county. Ferry County?

THE WITNESS: Your Honor mentioned Wilbur. There was a strong state bank in Wilbur and I have the impression that it was recently merged but I haven't the facts on that.

THE COURT: Well, what about Ferry County? What is the county seat of Ferry County?

THE WITNESS: Republic, I believe.

THE COURT: Any other communities in Ferry [548] County that in your judgment warrant the establishment of a bank, whether it be state or national?

THE WITNESS: Your Honor, I was only presuming that this was long term, that in the long term there might be development somewhere in the area of Ferry County, nearest Spokane County, that might be the basis for a population concentration or business concentration sufficient to support a bank.

THE COURT: I wanted to go over these market areas because I have just read this case you have talked about that you had, it was referred to me insofar as what constitutes a market area, and it was called to my attention, I believe by Mr. Silverman, my law clerk gave it to me and I read it.

Now Stevens County, what is the county seat of Stevens County?

THE WITNESS: I don't know, your Honor.

THE COURT: Would it be Colville? Is that correct, Mr. Moen?

MR. MOEN: Yes, your Honor, that is correct. Colville.

THE COURT: Now how about Chewelah, is that right, is there any other large community in there?

MR. SILVERMAN: Your Honor, if I may clarify something, as to the reason why we cited this Philipsburg [549] case, your Honor.

THE COURT: Because you are going to object to certain testimony concerning the market areas; I understand that is what you are going to do.

MR. SILVERMAN: As to the issues here, your Honor,—

THE COURT: I understand that. What I am trying to do here is see what the market area is and what sizes and that sort of thing. Let's go on to Pend Orielle County —Newport?

THE WITNESS: I believe there was a small state bank in Pend Orielle County.

THE COURT: All right. What else is there in Pend Orielle County? Would there be any other town in Pend Orielle County of any size, do you know or not? Are there?

[550] THE WITNESS: Your Honor, I may have misunderstood the question related to—

THE COURT: Areas where the Washington Trust Bank could have expanded into, that is what I am talking about.

THE WITNESS: If opportunities were presented.

THE COURT: All right, I am just talking about the size of the area, and its feasibility so far as bank expansion as of now. Newport, that is one city in Pende Orielle. What else is there? Let's go to Adams County, what is the seat of Adams County?

THE WITNESS: Connell, possibly.

THE COURT: Well, there is Connell, Washtucna, Kahlotus, and Ritsville is the county seat?

MR. MOEN: Ritsville, I think, is the county seat.

THE COURT: And any other large communities, Sprague, is that in Adams County?

THE WITNESS: I believe that is in Spokane County. I have never had occasion to place these localities in existing counties.

THE COURT: I am doing this just to determine where a bank could expand out of Spokane in that primary area. Then in Whitman County of course there's Colfax, and Pullman, Rosalia, Oakesdale.

[551] THE WITNESS: Uniontown, there is a bank in Uniontown.

THE COURT: Yes, that is the Farmers Bank, isn't it? We just had a bank robbery trial that occurred in Uniontown, so I am familiar with that bank.

THE WITNESS: There are a few banks in the Whitman County area, very small banks.

THE COURT: Lacrosse?

THE WITNESS: Yes, farm banks.

THE COURT: All right, now go ahead and ask him where he thinks, if he knows, that they could expand.

Q (By Mr. Torre) Well, then I refer you to Government Exhibit No. A-23. Do you have that before you, Mr. MacMurray?

A Yes. To answer that specifically, your Honor, I have no present opinion where Washington Trust Bank might expand or any other bank in the State of Washington. Now I am at A-23.

Q Directing your attention to Whitman County, which is on three or four pages of that exhibit, would you think the Farmers State Bank in Uniontown, is it, would be a possible bank for the Washington Trust Bank to acquire, possible?

A Possible, certainly there would be no supervisory [552] decision in something like that. I would think that would be up to the Washington Trust Bank. The total deposits are less than $2,000,000.

MR. TORRE: Could I have a little geographical assistance, your Honor, what county is the City of Ephrata in?

THE COURT: That is in Grant County.

(By Mr. Torre) Would you think that the Security State Bank in Ephrata would be a possible candidate for acquisition?

A Well, I was trying to speak from a prejudicial view of the state supervisor who would be reluctant to lose a sound state bank by this route, but I suppose, I

believe that the Security State Bank of Ephrata is a substantial bank, and, yes, it would be legally possible, and it would probably be attractive to a bank like Washington Trust Bank if they were so minded to go that far, and I think they have the capability in terms of capital structure.

Q Do you have Exhibit M-2 before you? Could you read page seven again of that Exhibit M-2, at the bottom, the final sentence, continuing over to the next page.

THE COURT: M-2?

MR. TORRE: M-2, your Honor, page seven, at the bottom and at the bottom of page eight. Again the [553] consulting report was written just recently.

THE COURT: Growth and new buildings, is that it?

MR. TORRE: Yes, you are on it. And the second paragraph where it says if the bank is to grow. That is the second paragraph.

THE COURT: All right, go ahead.

MR. TORRE: Your Honor, at this time I would like to move into evidence Government's Exhibit M, submarked 1 and 2 for identification, and also Defendant Washington Trust Bank's answer to Plaintiff's Interrogatory No. 48, which shows that the Washington Trust Bank held the right of first refusal on the stock of the Security Bank of Washington in Ephrata, and the Farmer State Bank of Uniontown.

Then I had no more questions, your Honor.

MR. MOEN: The same objections, and for the same reason.

THE COURT: Oh, I will let it in. All right, go ahead.

(Plaintiff's Exhibits Nos. M-1 and M-2 marked for identification were received into evidence.)

MR. TORRE: I would also like to offer in addition to Interrogatory Answer 48, Interrogatory [554] Answer 53.

THE COURT: I don't even know what they are.

MR. TORRE: Pardon me?

THE COURT: I don't know what they say.

MR. TORRE: Oh, 48 states, I stated it before, you

may not have heard me. The fact that Washington Trust Bank held first refusal on those stocks—

THE COURT: Oh, you mean the right of first refusal on those stocks at Uniontown, and the State Security Bank at Ephrata?

MR. TORRE: Yes. And also 53, your Honor.

THE COURT: How do you hold a right of first refusal?

MR. TORRE: They are fully set forth in that answer. I am reluctant to summarize it, but it is in the answer here.

THE COURT: You mean that before this bank could sell or merge or anything, they would have to offer the opportunity to Washington Trust to buy them out, legally obliged to do that?

MR. TORRE: Mr. Verveer is more familiar with that than I, your Honor.

MR. VERVEER: Your Honor, these rights of first refusal were on some partial amount of the bank's total stock, and they were taken in connection with [555] bank stock loans that were made by Washington Trust Bank.

THE COURT: All right.

MR. TORRE: I was also introducing into evidence, offering into evidence, Defendant Washington Trust Bank's answer to Plaintiff's Interrogatory No. 53, and that indicates that officers of Washington Trust Bank serviced the records of the Farmer State Bank at Uniontown, and the Bank of Pullman.

THE COURT: All right. Now, Mr. Moen?

## CROSS-EXAMINATION

BY MR. MOEN:

Q Mr. MacMurray, how long have you been living in Alaska?

A I was asked that before, and I think I responded 16 months.

Q And how long ago since you have lived in the State of Washington?

A I left the State of Washington to relocate in Alaska.

Q And how long ago since you were the supervisor of banking?

A I responded to that earlier—

Q In the State of Washington.

A January of 1965.

Q Now during this period since 1965 have you kept acquainted with the State of Washington?

[556] A What is your question, sir?

Q Since you are no longer Supervisor of Banking, have you kept yourself acquainted with banking conditions in the State of Washington?

A In what respect?

Q With respect to the business of banking.

A I don't understand your question, Mr. Moen. What do you mean, the business of banking?

Q Well, you know what the business of banking is?

A I think I do.

Q All right, have you kept acquainted with that in the State of Washington since you left the office of Supervisor of Banking?

A I don't understand to what extent.

Q Are you familiar with the banking market of the Washington Trust Bank?

A I have not paid any attention to those aspects of the business of banking since I have left the office of Supervisor of Banking for the State of Washington.

THE COURT: All right, the next question.

Q Now, you expressed a number of conclusions this morning with respect to the Pacific National Bank of Washington in Spokane. Do you have any real knowledge of what took place there?

A In Spokane?

[557] Q Yes.

A No, I do not.

Q You have made no effort to gather the facts?

A I have had no occasion to.

Q You have not interviewed any people?

A I have had no occasion to. I have not interviewed people.

Q Then all the conclusions you made are just speculations and guesses, is that correct?

A Opinions.

Q In your opinion do you think the Spokane branch of Pacific National Bank had adequate management?

A I would have had no way of ascertaining that, I did not supervise the Spokane National Bank.

Q Do you think they had the resources to provide adequate management?

A They appeared to have a capital of $750,000. I believe they should have been able to provide adequate management.

Q Do you know who owns Pacific National Bank of Washington?

A The Pacific National Bank of Washington?

Q Yes.

A I thought we were talking about Spokane National Bank.

Q No, I am now talking about Pacific National Bank of Washington.

[558] A Was your prior question directed to the Pacific National Bank of Washington?

Q I asked two questions and both of them have been aimed at the Pacific National Bank of Washington.

A My answer with respect to $750,000 capital was directed at the Spokane National Bank. Now what is your question?

Q The Spokane National Bank?

A Yes. That is what you were asking me about.

THE COURT: No, he was asking you about the facilities that were owned by the Pacific National Bank of Washington in Spokane.

Q Yes, and now I am asking you if you know who owns that bank.

A What bank?

Q The Pacific National Bank of Washington.

A Who owns the Pacific National Bank of Washington?

Q Yes.

A Well, it is a subsidiary of Western Bancorporation.

Q All right. Now do you think Western Bancorporation has the personnel and resources to intelligently operate a branch bank?



A Yes, I do.

Q What resources do they have?

A They are the largest holding company in the United States. Do you want me to give you an answer as to [559] the dollar resources?

Q Could you answer as to the dollar resources?

A I have no opinion on that right now.

Q Well, if I told you it was 14 billion dollars, does that sound reasonable?

A I was going to say, if you could help my recollection, and if you told me it was 14 billion dollars, I would accept that figure.

Q Would you accept that figure?

A Yes, I would.

Q All right, and are these 14 billion dollars worth of resources available to the branch in Spokane?

A I don't know, I would have no opinion on that.

Q Well, isn't the operating bank, doesn't the operating bank always have the benefit of the resources of the parent bank?

A I have no knowledge of the arrangement with Western Bancorporation and Pacific National Bank of Washington. Do you want just a sheer assumption on my part? I would assume that Pacific National Bank of Washington, or the National Bank of Washington for the period before it became the Pacific National Bank of Washington, would have made those decisions independently.

Q Would have made what decisions independently?

A Management decisions with respect to the operation of [560] their Spokane banking center.

Q And do you think they would be competent to make those decisions?

A I have no reason to believe that they wouldn't.

Q Do you still have before you Exhibit C?

A Yes.

Q This is the letter dated February 1, 1965, addressed to Mr. R. C. Carrell, and signed by W. K. Scammell,

Jr., vice-president and secretary of the Washington Trust Bank.

A Yes.

Q Now, is there anything wrong, in your opinion, about Washington Trust Bank having protested the application of the American Commercial Bank for a new charter?

A Anything wrong?

Q Yes, anything improper about that?

A They had the right to protest. From the standpoint of wrong or improper, I would say that those are incorrect terms.

Q Well, is it possible that a bank operating in Spokane, such as Washington Trust Bank, might have a good and valid reason for opposing the new charter?

A Yes.

Q And if they did, wouldn't the Regulator want to know what the reasons were?

[561] A Exactly. I really would have appreciated having had that letter written to me.

Q If this were addressed to you as a Regulator, I take it you would investigate all of these facts?

A I certainly would, I sought to do everything I could to accommodate the Washington Trust Bank's concern, even to the point of going to Spokane on a winter day to hold an open hearing.

Q If the purpose of the application was for sale at a later date, wouldn't the Regulator want to know about it?

A Yes.

Q And if that were the reason for forming the bank, wouldn't you grant the charter?

A I would not have considered that as a proper object, for the formation of a bank, to establish a branch; if that were the object, to establish a branch.

Q If it were the object, would you agree with the last sentence of that second indented paragraph that says that the bank is not being formed for legitimate purposes?

A If that were the object, yes. It was never demonstrated to me; apparently it has not been demonstrated, in fact, since the bank still exists.

Q You are aware, are you not, of Revised Code of Washington [562] 30.08.030, which provides among other things that banks in Washington may be organized only for legitimate objects specified by state banking laws, is that correct?

A I believe that is the proper wording; if you are reading it, I accept it.

Q And organization for the purpose of sale would not be a legitimate object?

A I don't believe it would. I would like to qualify my answer in terms of reality. The organizers of banks must, if they are properly advised by counsel, be aware of the fact that their stock is alienable. There is a ten year clause in state law that puts a limit, or rather conditions that alienability, but eventually it is alienable, unlike, for example, a contribution to a fund to start a mutual savings bank, or a mutual savings and loan association, which in effect would be lost forever.

Q I think you are referring to RCW 30.08.020, which requires banks to provide in their articles of incorporation a prohibition against sale or merger for a period of not less than ten nor not more than twenty years?

A Yes.

Q That statute was passed during your term as Supervisor, was it not?

[563] A Yes, it was.

Q What was the purpose of that statute?

MR. TORRE: Objection, your Honor, such evidence is inadmissible under the decisions of the Supreme Court of the State of Washington. The statute speaks for itself.

THE COURT: Well, he doesn't have to answer it, I think I understand.

Q (By Mr. Moen) Well, let me ask it this way: In your capacity as Supervisor did you make a recommendation to the legislature as to whether that Act should be passed?

A I don't know that they asked me specifically for a recommendation. It might have come up in a committee hearing. I did not make any recommendation against it, I assisted in the drafting of the legislation.

Q Did you feel that it was favorable legislation?
A In the public interest, yes.
Q In what respect?
A I feel, I feel now and I felt then, that the public interest would not be served by the instability that would result from bank formations solely for the purpose of a business transaction, rather than for the purpose of providing banking services to a community.
Q Do you recall in that statute that there is a provision which enables the supervisor to waive the waiting period?
A Yes. I don't recall the precise language.
[564] Q But you are familiar with the substance of it?
A Yes.
Q And what was the purpose of that waiver?
MR. TORRE: Again, your Honor, the same objection.
THE COURT: No, overruled. I will let him answer as to what the purpose of the waiver was.
A Well, the legislature in its wisdom decided that there should not be such inflexibility that a bank, once established, must continue to operate regardless of the circumstances for a period of ten years, since circumstances unforeseeable could be so compelling with respect to permitting the bank to be rescued, or acquired, or sold out, in order to maintain banking facilities, and in order to maintain solvency. We had a case during the time I was supervisor in which a very capable bank president was killed by a train. Conceivably the entire management of a bank could be wiped out in some tragedy, and there would be a problem.
Q And the bank might be in financial difficulties?
A Or there could be financial difficulty.
Q Do you think it would be proper for the waiting period to be waived without some cause or reason therefor?
A No, I don't think that the Supervisor of Banking should have the power to be frivolous in that kind of decision.
[565] Q And you would not so construe that statute if you were Supervisor?

A As Supervisor I would have looked with careful scrutiny at any request for a waiver.

Q Now, returning to Exhibit C, I will call your attention to page 3 where the signator of the letter cites further reasons for opposing the new bank.

No. A on that page says that there was an increase of 45% in downtown banking offices in the last four years in Spokane. The increase in banking offices was 9 to 13 since 1960. Isn't this the kind of information that the Regulator likes to have in front of him when he makes his decision?

A Yes, and that information would have been in the report of the investigation.

Q And take a look at Paragraph B: "There are presently 27 banking offices in the City of Spokane, which is a 100% increase since 1966. This was a period of time when employment was declining 5.5 per cent, the effective buying income was declining 4.1 per cent, retail sales were declining 1.4 per cent, and the Spokane economy was suffering through one of the most disappointing periods in its history."

Is that valuable information for the Regulator? I mean, when passing on an application for a new charter.

[566] A Yes, any factual information is—

THE COURT: No, that was not his question. His question was, isn't that valuable information.

A I don't know if it is true.

THE COURT: Well, if it is true.

A If it is true, it certainly is relevant, and therefore valuable.

Q All right, then wouldn't you verify it and see whether it was true?

A Wouldn't I, as Supervisor of Banking?

Q Yes.

A Yes, that is exactly what is involved in the process of investigation. Fact finding.

Q Directing your attention to paragraph C. "In the immediate downtown area of fifteen square blocks there are nine banking offices, three savings and loan offices, eight mortgage lenders and eleven small loan companies. This is a total of thirty-one financial institutions in a

very small geographic area. At no time in this immediate downtown area is anyone more than one block from a banking office, and in most cases much closer."

Isn't that pertinent information to consider when passing on the charter?

A Yes, it certainly is. As I say, if it is true it is certainly relevant, and if it is relevant it is certainly [567] important to consider.

Q Now, I understood you to say on direct examination this morning that the National Bank of Washington never got into Seattle, or north of Seattle, until its merger with the Pacific National Bank in 1970; is that correct?

A No, not north of Seattle. I believe my testimony was that the National Bank of Washington gained a location north of Seattle when they acquired the bank, the independent bank that was located just south of the city limits of Everett.

Q Do you know whether they ever made any effort to get into Seattle during that period?

A During what period?

Q During the period that you were the Supervisor.

A In the City of Seattle?

Q In the City of Seattle, whatever this area was that Cebert Baillargeon told you was excluded from the Seattle and Tacoma banks.

A I don't think the term "excluded" was used.

Q Well, let's limit it to King County.

A I don't recall any information ever coming to me. Of course, no one had any obligation to transmit information to me of that kind. The only time I received information on any acquisitions would be after the fact, after the deal was made and I was asked to approve it, [568] if it involved a state bank, as you well know.

Q So it is quite possible that they might have made a number of efforts to get in there without your knowledge, is that correct?

A Exactly.

Q Are you familiar with the sale of the West Seattle Bank?

A The West Seattle Bank?

Q Yes.

A What West Seattle Bank, Mr. Moen? I don't know of any West Seattle Bank.

Q The West Seattle National Bank that was sold to the National Bank of Commerce in approximately 1958.

A No, I am not. I wasn't familiar with a West Seattle National Bank.

Q You wouldn't then know who were the bidders for the purchase of that bank?

A You are saying that there was a West Seattle National Bank in 1958?

Q I am saying there was a sale of the West Seattle National Bank at approximately that time, and my question is whether you know whether or not the National Bank of Washington was a bidder to purchase that bank?

A Assuming there was a West Seattle National Bank which was sold in 1958, of which I have no knowledge, I have absolutely no knowledge of any efforts by the National [569] Bank of Washington with respect to that acquisition.

Q Now, did you tell me this morning that you thought the National Bank of Commerce has good management?

A I have always understood that to be the case. You understand of course that I have never had any direct relationship, having not supervised national banks, with any of the national banks, but it was always my understanding.

Q Well, what is their reputation?

A They have an excellent reputation, a reputation of quality in every respect, management and everything else.

[570] Q Do you consider whether or not they are vigorous and aggressive competitor?

THE COURT: I want the record to show that it takes him a long time to answer that question.

THE WITNESS: I have no reason to believe that they are not, or I should say I have no opinion of any bank being vigorous. However, I think that the National Bank of Commerce served the community in which they were located very effectively.

Q If this merger were approved and the National

Bank of Commerce went into Spokane, would you expect it to be a vigorous competitor?

A If the merger were approved and they went into Spokane—I'd like to know what "vigorous competitor" means?

THE COURT: Counsel, you're acting like a lawyer, which you are of course, rather than a witness—"Vigorous competitor" in lay terms, just accept it in lay terms "vigorous competitor".

THE WITNESS: Well, the problem is that I think of it from this standpoint, the standpoint of bank supervision and the concepts of vigorous competition don't enter into bank supervision as much as adequate service and effective performance in the community and this sort of thing. "Sound" competition is the standard for the bank supervisor. If "vigorous" competition would [571] be equivalent to "sound" competition, yes, I am sure they would.

MR. MOEN: Now, is there sound competition in Spokane today?

A Pardon?

Q Is there sound competition in Spokane today?

A I have no opinion on that as to Spokane.

Q That's because of your unfamiliarity with the banking business of Spokane?

A Yes, the situation in Spokane as such—is that what you mean, the competition of banks, is that what you mean by banking business? I know what constitutes banking business as such—you're talking about competition between banks and in a particular locality that is not exactly banking business.

Q Don't banks compete amongst themselves for business?

A For business?

Q Yes. As supervisor of banks don't you look into that aspect of their business?

A As supervisor of banks—that isn't a primary consideration in bank supervision. If a bank—

THE COURT: He asked you if you looked into it?

THE WITNESS Well, if it needs to be looked at, we look into it.

MR. MOEN: How do you determine if there is a [572] need to look into it?

A Complaints from the community if a bank is not opening its doors or it isn't honoring items or it isn't providing adequate services to the community.

Q Is that your idea of the lack of competition in the bank: when they don't open their doors?

A That would be one idea, I'm talking about that as an example of what might be complained about, but bank supervisors don't go out and test the vigor of competition, the process appears to take care of itself when new applications come in.

Q Well, do you have an opinion as to whether this particular merger is pro-competitive or anti-competitive?

A Well again that would depend on what is meant by pro-competitive and anti-competitive, I am not an expert in these theoretical aspects and I don't really have an opinion. My view is simplistic and it is that Washington Trust Bank in the time that I was supervisor was the most significant commercial bank in Eastern Washington, state-chartered bank I should say.

Q Do you think a brand new organized bank would have any impact on the banking business of Spokane?

A Not at the outset, no.

Q How long would it take them to develop that impact?

A In Spokane, and of course the potential is never at the [573] outset—

Q Well, how long would it take to develop that to a point where they have the—where it would have an impact on the banking business in Spokane?

A It would depend on circumstances in Spokane. I would suppose that it could take five or six years.

Q Might it take ten years?

A It could take ten years.

Q What would be the impact if the National Bank of Commerce went in today?

A The impact if they went in today—the National Bank of Commerce would not be a new bank going in. If you're talking about a new branch—or assume that

the National Bank of Commerce could go in and be established—

Q You are familiar with the National Bank of Commerce as it exists today and with all its resources?

A I believe that the National Bank of Commerce—

Q (Interposes) Well, you understand it is the second largest bank in the state?

A Yes, I was going to say that I believe it is the second largest bank in the state and it is, I believe, approaching the two billion mark.

Q All right, if that bank went into Spokane today, would it have an impact on the market if it went into Spokane today?

[574] A Yes.

Q And a much greater impact on the market than some bank that might go in and start from scratch, is that correct?

A Yes.

MR. MOEN: No further questions, your Honor.

THE COURT: Any redirect examination?

MR. McLACHLEN: Your Honor, the intervenor has no questions.

THE COURT: All right, I keep forgetting about you all the time. You're real important people here, I'm sorry. All right.

## REDIRECT EXAMINATION

### BY MR. TORRE:

Q Just two questions, Mr. MacMurray, you say it would have an impact on the market if they would go in. Did you mean go in with this acquisition or go in through a means of sponsorship with the acquisition of a small bank, for example?

A You mean the National Bank of Commerce?

Q Yes.

A There would be a substantial impact either way. I'm not certain of how much if they went in there, but it would be a substantial impact I am certain.

Q With regard to the ten-year provision that Mr. MacMurray [575] quoted to you—

THE COURT: Mr. Moen.

MR. TORRE: Excuse me, Mr. Moen quoted to you. That only prohibits the voting of the stock of the new bank during the first ten years without the approval of the—

MR. MOEN: I don't think that is a proper area for opinion evidence. The statute speaks for itself.

THE COURT: That's why he objects.

MR. TORRE: Yes, your Honor.

THE COURT: Well, in substance—

MR. TORRE: The point, your Honor, is that the sale of stock is not prohibited and that—

THE COURT: Oh, you can sell the stock all right but it does directly bear on merger and acquisition, is that right, is that what the statute bears out?

THE WITNESS: Yes, the intent.

THE COURT: You can sell from one person to another.

MR. TORRE: Well, could a holding corporation like the Marine Bancorporation acquire less than 25 percent of the stock by purchasing it right now?

A The law in the State of Washington being that up to [576] 25 percent can be acquired.

Q So they could acquire 25 percent interest in that bank if they should so choose?

A Assuming that the law permits holding companies to hold stock in more than one bank.

THE COURT: Well, we're getting away from the point at this time. The statute is—and of course you've already told him what the point is.

MR. TORRE: The only point I want to make, your Honor, is—

THE COURT: Aside from the fact that I probably already knew about that—anything further from this witness?

MR. TORRE: Nothing further, your Honor.

MR. MOEN: Nothing further, your Honor.

THE COURT: You may step down and be excused then.

MR. TORRE: We just have to clear up a few things here.

THE COURT: All right.

MR. VERVEER: The government would like to offer into evidence the remainder of Exhibit No. F not accepted into evidence as yet.

THE COURT: What does that have to do with?

MR. VERVEER: Exhibit No. F, your Honor, bears [577] upon the history of the acquisition taken from the files of the National Bank of Commerce.

MR. MOEN: We would renew our objection to this admission for the same reasons that we objected to all the previous admissions.

THE COURT: State it more specifically will you, for this one now. Tell me what you think is objectionable about it, Mr. Moen.

MR. MOEN: Well, for number one, it is hearsay, number two, I can't see any possible relevance or materiality to F-1.

THE COURT: Well, I'll agree with that. I don't know F-1.

MR. MOEN: And F-2. F-2 and F-3 are exactly the same.

THE COURT: Those mention the activities of the attorney for the bank and his preparation for the trial, is that it?

MR. VERVEER: Yes, your Honor.

MR. MOEN: And for another reason it is privileged information.

THE COURT: All right, next?

MR. MOEN: Are you offering anything further?

MR. VERVEER: As I understand it we had offered the remainder of the Exhibit No. F-1, and 2 had [578] been admitted previously—

THE COURT: I let that in because I felt that it didn't have any bearing on the question before me and it would be just expeditious to do it and I don't want to listen to any argument about it.

MR. MOEN: I misunderstood the offer.

THE COURT: I don't think that what you were doing in preparation for the trial has any bearing here. Then the next one, No. F-4 and -5, what's going on over in Montana, a discussion of what a great future there

would be in trying to develop the correspondent banks, counsel; with all the banks that were over there in the Spokane area.

MR. VERVEER: That's precisely it, your Honor, to get active in correspondent banking in Spokane and have a Spokane office and we think that that is relevant to prove that. I think it shows—

THE COURT: Well, so what, what does that have to do with the question of whether or not this is anti-competitive or pro-competitive?

MR. VERVEER: It shows the potential competition, your Honor, and that the National Bank of Commerce has the incentive to enter the Spokane area.

THE COURT: Oh, I agree that the National Bank of Commerce has an incentive. They want to get [579] in there and that's why we're here.

MR. MOEN: Provided they can get in on an acceptable basis.

THE COURT: That's why we're here, otherwise we wouldn't be here. What they're talking about here, Mister I keep forgetting your name—

MR. VERVEER: Verveer, your Honor.

THE COURT: Mr. Verveer, this is a projection of what they would hope to accomplish if they eventually got in there but whether or not they are able to develop what they hope to develop, it is just speculation, it's speculation of the rankest kind.

MR. VERVEER: Well, your Honor, we submit that particular exhibit relating to the correspondent bank corroborates the testimony that we have heard that there is an incentive to enter Spokane. And it is corroborative of the material or proof taken from the files of the National Bank of Commerce and it was dictated by Mr. Frank Abersfeller who is responsible for correspondent banks and obviously it is speculative, it has a speculative aspect to it but nevertheless this was a view of a responsible officer of the National Bank of Commerce.

MR. MOEN: I will renew our objection for the same reasons.

[580] THE COURT: I don't think it is material. I'm going to act like a Judge for a change and rule on it. I'll sustain your objection rather than just let these things come in. I don't think it has any materiality to the issues.

MR. VERVEER: I'm sorry, your Honor. I want to be clear on which of these exhibits you ruled on.

THE COURT: 4 and 5 are the ones you tried to get in.

MR. VERVEER: We would like to have an offer of proof on 4 and 5, if your Honor please.

THE COURT: No, I've ruled on it and the exhibits speak for themselves, and if you want to argue that I was in error to the Court—so why make an offer of proof—

MR. VERVEER: Well, we wanted to have it clear in the record that we attempted to do so, your Honor.

THE COURT: Yes, you have attempted the introduction. I just don't think it is material to the issues. All right, next.

[581] MR. VERVEER: Is Mr. Moen going to make specific objections to F-1 and F-2?

THE COURT: I don't know.

MR. MOEN: He has already ruled.

THE COURT: Well, go ahead with the next offer and then we'll see.

MR. VERVEER: May I double back for a moment, your Honor, as to Exhibits 1 and 2, as I understand it Exhibits F-1 and F-2 have been admitted.

THE COURT: Yes, they have been admitted. I admitted those when I shouldn't have. I don't think they have any bearing on this at all, as to Mr. Moen's activity in connection with the preparation of the case.

MR. VERVEER: We are not introducing that to show Mr. Moen's preparation for the case. In fact, if Mr. Moen wishes and the Court is agreeable we will be happy to expunge this. It's merely the first line in Exhibit F-2 which would complete the thought from the bottom of page 1, at the bottom of page 1.

THE COURT: Do you mean about whether or not they expected the Justice Department to be enthused? Is that what you are saying?

MR. VERVEER: We just wanted that to make F-1, to make this a complete document, your Honor, that sentence.



[582] THE COURT: I don't understand, Counsel, whether the Justice Department would be enthused or not enthused, it's not material to the issues here.

MR. VERVEER: Your Honor, again, this document relates to the sentence at the top of the page and—

THE COURT: Well, it's already in so there is no use in discussing it any further, and that's my reaction to that statement. All right, go ahead.

MR. VERVEER: Yes, your Honor. And did your Honor rule on F-3?

THE COURT: I think I did.

MR. VERVEER: This, once again, this merely relates to the so-called public hearing which the defendants and intervenor claim in some sense is material to the issues in this case and we merely want to meet the contentions that they have asserted.

THE COURT: I just don't think that that is anything material and I reject your offer without objection being made to it. I just don't think that it is material at all. All right, next.

MR. VERVEER: Your Honor—

THE COURT: You have cluttered up this record with a lot of things and I am not going to continue with—

MR. VERVEER: Do I understand that the hearing is not material—

[583] THE COURT: I didn't say that the hearing wasn't material, but I don't think it is material as far as my decision is concerned, what they said to the Comptroller's office about the time of the hearing or whether or not to bring suit if they didn't have one, I don't think that's material to the issue that I have to decide.

Let's go to the next one.

MR. TORRE: We agree with that, your Honor, and we produce this merely to rebut the transcript that was introduced by Mr. Hartman.

THE COURT: To show what?

MR. TORRE: Just to rebut the transcript that Mr. Hartman introduced at the very beginning of this trial and during the opening statement—and we wouldn't have introduced it at all if that wasn't done.

THE COURT: Well, all right.

MR. HARTMAN: I'd like to know if they think that the hearing is material, and if it is then the transcript and those documents have some relevance. If it is not material—

THE COURT: Do you think it is material? I don't.

MR. VERVEER: We absolutely agree that it is not material.

THE COURT: I don't think it is material, any [584] of those documents are material.

MR. VERVEER: Your Honor, shall we take the transcript out?

THE COURT: Well, you can leave it in now and then go on to something else. I don't know why it is in, but it is in.

MR. VERVEER: Your Honor, I would like to offer into evidence Exhibit No. F-6 and F-7, part of the same document.

MR. MOEN: I believe the Court has already ruled on 6.

MR. VERVEER: The Court ruled on 4 and 5 is my understanding.

THE COURT: Do you want to introduce Paragraph 2? "I attended lunch with half of the office, and my wife and I were entertained by Mr. and Mrs. so and so"—do you think that's material to the issues here?

MR. VERVEER: No, your Honor, we certainly don't. We do think that that's the kind of thing that,—that the observations made by E. C. S., who I don't know who he is other than—apparently he is an officer of the National Bank of Commerce—and as to the Washington Trust Bank's soundness and capability of the management are material to our contentions that it is a sound bank capable of geographic expansion if [585] the management of that bank desires to expand.

THE COURT: Is there any issue about the soundness of the bank?

MR. MOEN: No, not as far as we are concerned, your Honor.

MR. HARTMAN: I think that is in the pre-trial order, your Honor.

THE COURT: I don't think there is either. I don't think the record needs to be cluttered up with that. That's proof of something that is not even in issue.

MR. VERVEER: There is no argument that Washington Trust Bank is incapable of expanding beyond the Spokane metropolitan area. It demonstrates the capability of the bank.

THE COURT: Well now, I am not going to admit this to prove that, just to prove that, there is no issue as to its soundness.

All right, let's go to the next one.

MR. TORRE: May I interrupt here? There is an issue as to the ability to expand beyond the Spokane metropolitan area, therefore its overall capability, that would relate to that capability.

THE COURT: Where did that issue creep into the issues here? The Washington Trust to expand beyond [586] where?

MR. TORRE: Well, it's been in the Complaint and the pre-trial order and so forth.

THE COURT: I know it has an ability to expand. Tell me, what does that have to do with this?

MR. TORRE: If this merger is consummated the Washington Trust Bank as an independent institution will be eliminated and therefore then other potential competitors in the market or a potential competitor in the other markets of Eastern Washington would be eliminated and perhaps the potential merger of other middle sized banks would be eliminated and they would not be able to challenge the statewide banks in various regional and local markets in the state. That is our contention, your Honor.

THE COURT: Where did you say they could expand to, just to that primary area?

MR. TORRE: Do you want concrete examples or theoretical examples?

THE COURT: Well, theoretical examples. I have been living on those for the last couple of days, but the point you make is that it has the ability, therefore if it has the ability and it merges with the N B of C, then it would no longer have the ability; is that the idea? Well, of course that would be true if Washington [587] Trust as a state bank would no longer exist, wouldn't it, it wouldn't be a state bank any more, it would be a branch of the National Bank of Commerce. But therefore, you would have no ex-

pansion, there would be no expansion by the Washington Trust in other areas?

MR. TORRE: That's right, your Honor, no more expansion by Washington Trust within the city of Spokane or the incorporated areas of Spokane or the county within the Spokane metropolitan area, within Spokane County.

THE COURT: All right.

MR. TORRE: All these documents go to that capability and go to that issue. Those are our contentions, your Honor.

THE COURT: Well, has it ever been denied here that it had the capability of expanding?

MR. MOEN: We will certainly deny that it has the capability of expanding all over the entire region, over the entire State of Washington. They don't have that kind of capital or that kind of personnel.

THE COURT: All right.

MR. MOEN: If we want to go out and pick up a bank in Uniontown, of course we have the capability if we want to exercise it.

THE COURT: All right. I understand that. [588] Go ahead.

MR. MOEN: Even if they had the capability they are not a statewide bank.

THE COURT: Well, I would agree with that. Now do you want to talk about the primary area around the Spokane market, I'll agree with that, if you want to do that. I understand there is no contest about that, is there?

MR. MOEN: No.

THE COURT: There is no contest about the primary area around Spokane and that includes those counties with the horizontal lines.

MR. MOEN: I'll go as far as Davenport.

THE COURT: Davenport, Lincoln County is forty miles away from Spokane.

MR. TORRE: Your Honor, we have alleged that one of the sections of the country in which competition may be entered into is Eastern Washington and we do not think that it is proper to geographically limit that section of the

country by any specific metes and bounds and we're not required to do this.

THE COURT: The testimony has been, by your own witnesses, that certainly some of these areas that are in the eastside of the Cascades are not in the Spokane banking market at all.

[589] MR. TORRE: That's true but I just do not want to take the position of demarking a specific area.

THE COURT: You don't have to. I'll do it for you when I finally resolve the case.

All right, go ahead.

MR. VERVEER: In light of our position about the hearing, the government won't offer F-6.

THE COURT: About the hearing, I guess everybody is in agreement about that. It has nothing to do with it. And the reason I mentioned it is that when we started out Mr. Hartman was of the opinion that we were going to attack the integrity of the Comptroller in regard to holding the hearing. Isn't that about the size of it?

MR. HARTMAN: Yes, your Honor, and also there would be some background information for your Honor's convenience, that's all.

THE COURT: All right.

MR. HARTMAN: For whatever it's worth.

MR. VERVEER: Your Honor, Exhibit F-8 is to the same effect, having to do with the—

THE COURT: Let's see what F-8 says.

MR. VERVEER: We had to have F-8 here so we could see what is in the second paragraph, your Honor. I am sorry, your Honor, that's F-9, your Honor.

THE COURT: All right. Mr. Blanchard, who is [590] the Deputy Comptroller of the Currency, is that correct?

MR. HARTMAN: Yes, I believe so.

MR. VERVEER: There was some question about the propriety of the Regulator helping along the applicants in the merger in terms of getting it past the Department of Justice.

THE COURT: It's pretty obvious that there is great rapport between the Department of Justice and the Comptroller of Currency.

MR. VERVEER: We get along very well with Mr. Hartman, your Honor.

THE COURT: All right, I don't think that has anything to do with it.

MR. VERVEER: Now, as I say, your Honor, in light of your ruling on the hearing we do not make any—

THE COURT: All right, F-8 is out.

MR. VERVEER: The same with F-9, your Honor.

THE COURT: All right. F-9, that says—it tells about a suit that you brought that they won, is that true?

MR. VERVEER: They have won them all, your Honor.

THE COURT: Okay, let's go on to the next one.

MR. VERVEER: We won't give up, however.

THE COURT: Go ahead to the next one.

MR. VERVEER: Likewise, your Honor, we will make [591] no effort to introduce F-10 at this time.

THE COURT: All right.

MR. VERVEER: Nor F-11. Nor of F-12, your Honor.

MR. HARTMAN: Excuse me, your Honor, is it my understanding that they are withdrawing these and not offering them?

THE COURT: They are not offering them. They may be interesting reading but if you are not going to offer them I don't want to know anything about them.

MR. VERVEER: I am sorry, your Honor. Now F-13, F-14 and F-15 we would like to offer into evidence.

THE COURT: Let me read that. That's talk about the price, doesn't it? That deals with the N B of C policy that they don't want to send somebody into the Spokane market that might not be too readily accepted by the local people. That type of thing, I don't think that's material.

MR. VERVEER: Your Honor, the part we would specifically like to point out is at page F-13, the first and second paragraphs. It has to do with the negotiations of the price involved in the acquisition of the Washington Trust Bank. The document, your Honor, was written by Mr. Faragher, the president of the National Bank of Commerce.

[592] THE COURT: What is his name?

MR. VERVEER: T. Robert Faragher, your Honor, the president of the National Bank of Commerce.

THE COURT: What you mean is what Mr. Faragher was doing, he was relating what he said insofar as what he thought the stock transaction should involve and gives his reasons why they shouldn't pay any more than so much, that's all that amounts to. I don't see anything about that that would bear on the issues here.

MR. VERVEER: Your Honor, we feel that it is relevant as to the capability of the National Bank of Commerce to pay—

THE COURT: A lot of money to pay for a small bank?

MR. VERVEER: —to pay any price it feels necessary to acquire the bank and to make it sufficiently attractive. In the first paragraph, the initial offer, you will notice, there was an offer of between 400 and 500 thousand shares of Marine for Washington Trust and we will have an Exhibit E, which we will introduce, to show what the shares were worth and the final offer, which was 800 thousand shares.

THE COURT: I just don't think that is material for me to know what they finally agreed on, because here's what you're telling me, you say because they are [593] willing to pay that amount for that bank ultimately that I should conclude that they could go into Spokane and pay whatever the asking price was for American, or whatever it is, and I just don't think that that has any bearing on it. Suppose they could, I know that they could go over there and pay whatever they were asked. They have the capability of doing this. Whether or not they would do it is something else again. I am not here to decide that. I am to decide whether they should or should not pay more than the thing is worth. I'm just not going to make that decision.

MR. VERVEER: We certainly agree with that, your Honor. But getting back to the point of capability just mentioned—

THE COURT: Well, why are we talking about capabilities? Everybody here has testified they have 1,800,000,000. They must have some capabilities.

MR. VERVEER: That's the reason we offered it, your Honor.

THE COURT: I just don't think it's material and I am going to reject that offer.

All right, the next one.

MR. VERVEER: Your Honor, we would offer next Exhibit F-18, and particularly showing in the third paragraph the assessment of Mr. Maxwell Carlson of Mr. Philip [594] Stanton as a professional banker. We say also, your Honor, that it bears on the capability of Washington Trust Bank to expand geographically.

THE COURT: Well, this was discussed between Mr. Carlson and Mr. Stanton, in which Mr. Carlson sets forth his observations of Mr. Stanton's capabilities, is that the idea?

MR. VERVEER: Yes, your Honor.

MR. MOEN: We will admit that, too, we think he is a capable man.

THE COURT: Well, I don't think that has any bearing on my decision.

MR. VERVEER: There is no objection to it then?

THE COURT: Well, I wouldn't admit it, I don't think it has any materiality here.

(Discussion off the record.)

THE COURT: All right—

MR. VERVEER: We would like to introduce F-21, your Honor, merely for the purpose of the statements made in the last sentence of the first paragraph.

THE COURT: Incidentally, for the record, so there won't be any misunderstanding, I have never been a customer of the Bank of California as long as Mr. Faragher was there as far as I can recall, nor a customer of the National Bank of Commerce. I haven't done any business [595] with them or had any business dealings with them whatsoever and I had nothing to do with—well, you all know about that, you do know that I was one of the organizers of the bank and eventually it was acquired by the Seattle-First, but I had nothing to do with it and I was long gone before that ever happened. I just wanted the record to show that you know that.

MR. VERVEER: Yes, your Honor. Now, this exhibit again dictated by Mr. Carlson shows—demonstrates a dual interest on the part of the National Bank of Commerce to acquire both Washington Trust Bank and also the services of Mr. Stanton as the manager.

THE COURT: All right. Well, I don't think that's material here either.

[596] MR. VERVEER: Your Honor, the government offers 23-A, a memo dictated by Mr. Carlson.

THE COURT: For what purpose?

MR. VERVEER: We submit this related to testimony you heard from Mr. Smith on the recognition of the bankers of—of banks in the wings of the market. I invite your attention to the last paragraph in—the last sentence in paragraph four. This is November of 1968, Mr. Carlson reports Mr. Stanton saying that he expected National Bank of Commerce to be in Spokane some day.

THE COURT: Oh. Well, for whatever it is worth, I will admit that one sentence that Mr. Stanton said, that National Bank of Commerce would be there some day. I suppose after Seattle-First came in and the National Bank of Washington came in, he thought well, they will all be there.

MR. VERVEER: The government offers Exhibit F-25, your Honor. This is a memorandum dictated by Mr. Carlson in November of 1961, and we invite the Court's attention to the last paragraph on the page, the first sentence of that paragraph.

THE COURT: You mean when Mr. Carlson and Mr. Stanton disagreed?

MR. VERVEER: No, your Honor, we don't think [597] that is relevant. What we do think is relevant is Mr. Carlson's statement which I believe indicates an interest in the National Bank of Commerce's acquisition of Washington Trust Bank at some date.

THE COURT: You mean that some day Andrew Price, Jr. and Phil Stanton could get together, isn't that the idea?

MR. VERVEER: That they "Could and would get together in the not too distant future and pool their mutual interests in the banking business."

THE COURT: All right, I will let that in.

MR. VERVEER: Thank you, your Honor.

THE COURT: That was back in 1961?

MR. VERVEER: Yes, your Honor. A continuation of that document is F-26, your Honor. We offer it—

THE COURT: I suppose Mr. Carlson never dreamed that he would be sitting here listening to me read these notes that he made in 1961. All right, go ahead.

MR. VERVEER: We offer this—I draw the Court's attention to the first sentence on F-26, and submit that this relates to Professor Smith's testimony on the sort of behavior one would expect in an oligopolistic industry. And it also demonstrates what we refer to as the wings effect, Mr. Phil Stanton saying that some day the National Bank of Commerce [598] will be in Spokane, and we will be friendly competitors.

THE COURT: Where does it say that?

MR. VERVEER: The first and second lines of F-26, your Honor.

THE COURT: Well, at least he used the word "competitor," so I'll let it in.

MR. VERVEER: Thank you, your Honor. Your Honor, the government offers Exhibit F-27, this also dictated by Mr. Carlson in 1961, and I invite the Court's attention to the last paragraph on the page.

THE COURT: I will read that. Mr. Carlson said he would be disappointed if he didn't have the first crack at it, isn't that what he said?

MR. VERVEER: Yes, your Honor.

THE COURT: All right, I will let that in.

MR. VERVEER: Thank you, your Honor.

THE COURT: That further would indicate to me that he might have said that, but you didn't say anything to the effect that Stanton said he would get it. He didn't mention that in his memorandum, did he?

MR. VERVEER: That is correct, your Honor, he didn't.

THE COURT: That was just a hope on his part. There was no agreement.

[599] MR. VERVEER: Yes, your Honor, and we only offer it to demonstrate the hope on the part of the National Bank of Commerce.

MR. JOHNSTON: And for the record, just the last paragraph.

THE COURT: Yes, just that statement, that Mr. Carlson, he didn't make a statement, it was just a memo of what he said.

MR. VERVEER: Did I understand the Court to rule earlier that the merger calculations, that is, the various rates at which National Bank of Commerce proposed to—

THE COURT: You mean their dickering and how much they finally had to pay, and what they first offered and that type of thing?

MR. VERVEER: Yes, your Honor.

THE COURT: No, I don't think that is material, and I will tell you why. You say it goes to prove their capability, well, capability to buy a bank with $11,000,000 demand deposit. I agree that they would have that capability, if that is what you want to show. They would have it, they could buy it at some price.

MR. VERVEER: Yes, your Honor, we offered it for that purpose.

THE COURT: Well, they would have the capability. [600] Whether they would want to or not is something else again.

MR. VERVEER: And also to demonstrate, your Honor, that where they have a sufficient interest, they are prepared to—

THE COURT: They are prepared to pay a good price.

MR. VERVEER: Yes, your Honor, and they will improve their offers in the course of negotiations.

THE COURT: All right.

MR. VERVEER: Your Honor, the government offers Exhibit G-1.

THE COURT: All right. I will let that in if you want it, and I will tell you why. Read down there in the middle of the paragraph. It says, "Bill showed some concern over the competitive factors in banking today, and one of these days may just want to throw in the towel," too competitive.

MR. VERVEER: All right, your Honor, thank you.

THE COURT: That goes against the theory that there is no competition in banking, doesn't it?

MR. VERVEER: It's quite possible, your Honor.

THE COURT: Is that it?

MR. VERVEER: But they had their headquarters within the Spokane metropolitan area, that is agreed to.

[601] THE COURT: All right.

MR. VERVEER: We invite your attention, your Honor, to the last sentence in the first paragraph. This was dictated by W. J. W., and I don't know who W. J. W. is.

MR. MOEN: Neither do I.

THE COURT: That isn't Mr. Witherspoon, is it?

MR. VERVEER: No, your Honor, this is an officer of the National Bank of Commerce, but we don't know the man's full name.

MR. JOHNSTON: I wonder if this is covered by our admissions, and if so why do we need to duplicate it here? Isn't that the same thing?

MR. VERVEER: We will have to consult the admission, your Honor. The admission by the National Bank of Commerce says the National Bank of Commerce thought it had an informal understanding with the borrowers. It says it "had suggested that as a gentleman's agreement that we would have first refusal."

THE COURT: Whatever happened to the bank?

MR. VERVEER: The bank is still there, your Honor, there was no agreement to purchase.

THE COURT: All right.

MR. VERVEER: But we do contend that it is a foothold bank in the market.

[602] MR. JOHNSTON: What was the disposition of that?

THE COURT: Well, if it is in the admissions, I think that the admissions stand. Then we don't need the exhibit.

MR. TORRE: Well, your Honor, the admissions do not quite admit—it is a qualified admission.

MR. JOHNSTON: Well, you drafted them.

THE COURT: Did you?

MR. TORRE: I drafted the request for admissions but—

THE COURT: Well, I understand that, but when you draft a request for admission you say, do you admit the following to be the fact, and then you set out what you want them to admit, and then they admit it.

MR. TORRE: Well, that is the problem, they admitted it, and then they qualified it. It is in the pretrial order as Exhibit F, your Honor.

MR. JOHNSTON: Your Honor, the qualification has nothing to do with the gentleman's agreement. They drafted it, and the words were copied, word for word.

THE COURT: Well, he says he is offering this to prove that that is a foothold bank.

MR. VERVEER: And, your Honor, at one time [603] National Bank of Commerce had a right of first refusal on the stock.

THE COURT: Well, that is what they say he admitted.

MR. JOHNSTON: We did.

THE COURT: All right, they admit that, plus the fact that they don't question that somebody could buy that bank at some price.

MR. JOHNSTON: No, your Honor, the admissions simply cover—I was just trying to—

THE COURT: No, not in the admission you didn't say that, but what I understood you to say now is there is not any question about the fact that this bank could be purchased, whether or not it is a foothold bank—

MR. JOHNSTON: Oh, the negotiations on this bank broke down and the bank is completely out of—

THE COURT: No, I mean by somebody, some time, could be purchased.

MR. JOHNSTON: Oh, I suppose it could be purchased by somebody.

THE COURT: Well, that is what he claims, it is a foothold bank, it is a bank that somebody could buy if they wanted to get in the area. Of course Opportunity isn't in Spokane, it is out of Spokane, and so is Rockford and so is Cheney. And incidentally [604] somebody said it was 15 miles, and I say that by the new road it is 12 miles to Cheney.

MR. JOHNSTON: I hope your Honor didn't misunderstand, I was merely—

THE COURT: I understand the purpose, and I will let it go in. For whatever bearing it has, I will let it in.

MR. JOHNSTON: Is it the last sentence that you want in the first paragraph?

MR. VERVEER: The last sentence is adequate, or the last two sentences.

THE COURT: There was a lawsuit apparently in this situation, is that right?

MR. VERVEER: Yes, your Honor, there was. It related peripherally to the stock.

THE COURT: Yes, I see that.

MR. VERVEER: Your Honor, G-3 is a calculation by Ralph J. Stowell of the merger request—I am sorry, the price which the owners of the Farmers and Merchants Bank suggested to the National Bank of Commerce as a possibility.

THE COURT: Well, what would that have to do with the situation if they never bought it?

MR. VERVEER: We are just trying to demonstrate, your Honor, that there was some interest in this bank. [605] THE COURT: Well, they agree with that, that this just shows what the price was.

MR. VERVEER: But, your Honor, I believe the admission says that there was never any serious negotiation. We believe that these documents will demonstrate to the Court the extent of negotiation, and the extent of their seriousness.

THE COURT: Well, I don't know what you call serious negotiations, but they did negotiate some so let's go to the next one.

MR. VERVEER: Thank you. Your Honor, we offer G-5 and continuing over to G-6, which are some calculations on a possible offering price compiled by Mr. Robert Buck of the National Bank of Commerce.

THE COURT: Well, what is pertinent in it?

MR. VERVEER: It demonstrates that the interest was sufficient to make these calculations, to send an officer over there to discuss it with them.

THE COURT: Well, it says here that he indicated they were capable of running the bank—

MR. VERVEER: Yes, your Honor, but we draw your attention to the fact that the National Bank of Commerce



ended up offering Washington Trust Bank almost twice as much as they initially were inclined to offer.

THE COURT: Well, they didn't buy this one [606] though, did they?

MR. VERVEER: No, your Honor.

THE COURT: All right, then it is not material. Let's go to the next one. That one is more about Farmers and Merchants Bank?

MR. VERVEER: I take it, your Honor, you disposed of those G-5 and -6?

THE COURT: I have. Now how about 7?

MR. VERVEER: This has to do with an offer in March of 1969 by one of the three principal owners of the bank to negotiate further on the possibility of selling the bank to National Bank of Commerce. That is contained principally—

THE COURT: Well, that was a statement by Andrew Price to Mr. Hall that they were no longer interested, and they had better go ahead and develop the bank with the same energy that they had in the past. Isn't that what he said?

MR. VERVEER: I am not sure that it is in this document, but I am certain that was the upshot of the negotiations.

THE COURT: Well, he said "I told them after discussions with Mr. Carlson we felt it would be better for him to continue to develop the bank with the energy that he had already shown, and for us to cease to [607] inquire." In other words, he politely told them that they weren't interested.

MR. VERVEER: Yes.

THE COURT: All right. Now the next one. I don't think that one is material, do you?

MR. VERVEER: Well, we think the whole history of this negotiation is material in terms of display of interest, and also a showing of some willingness.

THE COURT: Well, all right, they showed at one time an interest and at another time they didn't show an interest. All right, go ahead.

MR. VERVEER: We offer Exhibit G-8—

THE COURT: How many more have we got?

MR. VERVEER: It is close to the end, your Honor.

THE COURT: All right, go ahead.

MR. VERVEER: G-8 and G-9, one is written by Mr. Buck, the other by Mr. Stowell, and they relate to the same meeting that the gentlemen had with the owners of the Farmers and Merchants Bank in August of 1968. Again it has to do with the fact that there was a right to first refusal, and also some assessment of the desirability of the bank. And also some rough calculations on what would be an appropriate offering price.

[608] THE COURT: All right, I will admit that for whatever it is worth.

MR. JOHNSTON: Is that in full?

THE COURT: Oh, it generally rambles on as to discussions about what the Farmers and Merchants should do, and what the people who were running it thought they should do, and that they might want to merge with American, and so forth. It goes on and on.

MR. VERVEER: Your Honor, the government offers Exhibit G-10. It was dictated by someone whose initials are C.C.M., I don't know his identity. Because of the source we assume he is an officer in the National Bank of Commerce. We invite the Court's attention to the bottom paragraph on the page which shows how the gentlemen's agreement for the right of first refusal came about. This occurred at the time the Farmers and Merchants Bank was for sale, due to the death of the man who had been running the bank.

MR. JOHNSTON: This is in 1966?

MR. VERVEER: That is correct.

THE COURT: What it shows is that Seattle-First was interested, and the Old National Bank was interested. I mean that's what it shows here, and whether they were or not depends upon the veracity of Mr. Hall, who was trying to sell his stock to the N B of C, and of course [609] how do I know whether Mr. Hall was just trying to prop up the value of his stock by trying to tell the N B of C that Seattle-First and the Old National Bank were interested.

MR. VERVEER: Your Honor, at this time Mr. Hall was not the owner of the bank, Mr. Hall was preparing

to make a bid on the bank. The owner of the bank, and I believe there is a reference to the Akers family,—

THE COURT: Well, he said he had 300 shares, and he could control 1500. Because the Aker family would trust his judgment as far as negotiating a deal was concerned.

MR. VERVEER: Yes, your Honor, but he is trying to acquire controlling interest in the bank at this point.

THE COURT: That is right.

MR. VERVEER: And in the bottom paragraph there is an indication of what the arrangement was with the National Bank of Commerce.

THE COURT: Well, all right, I am not trying to read Mr. Hall's mind, but I don't think he hesitated in telling N B of C that there were some other offers.

MR. VERVEER: Well, your Honor, I think that this statement shows that we, that is National Bank of [610] Commerce, chose not to place a bid.

THE COURT: Well, I understand, but what I was saying is that I don't suppose Mr. Hall hesitated in notifying the N B of C that they had a couple other bidders.

MR. VERVEER: Well, the memorandum reflects, the second paragraph, that Seattle-First and Old National Bank were interested, but then withdrew for some reason.

THE COURT: All right. Well, I just don't think it is material to the issues here. I really don't think it is material because we have got so much in there on Farmers and Merchants now that this is just cumulative.

MR. VERVEER: Well, we thought of it as an example of how these rights of first refusal, these gentlemen agreements—

THE COURT: Well, I understand.

MR. VERVEER: Your Honor, we offer Exhibits G-11A, and G-11B. G-11B is a memorandum from Kenneth Clark, who is the vice-president, I believe he is presently the secretary of the National Bank of Commerce but at that time he apparently was the cashier, reporting on a conversation he had with some people interested in selling the Farmers and Merchants Bank, and they were [611] apparently asking National Bank of Commerce if

they would be interested in making a bid. That we regard as background, your Honor, and Government's G-11A, is Mr. Clark's letter back to the man who had contacted him. We offer this for the material contained in the second paragraph of the letter.

MR. JOHNSTON: This is 1965?

MR. VERVEER: That is right, it is 1965. We think this, although I have to admit it is not a picture of clarity, we submit that it is probably another example of what Professor Smith was talking about in terms of the behavior of oligopolists.

THE COURT: Well, I don't think it is material, and I am going to sustain an objection if you will make one.

MR. MOEN: We feel that we have a continuing objection.

THE COURT: All right, I will sustain the objection and now we will take a brief recess.

(Afternoon recess)

THE COURT: All right, counsel, do you have something further?

MR. HOFFMAN: Yes, just a very few other things. First of all, Mr. Moen, the defendants, have very kindly given us new copies of some of our exhibits contained in [612] Exhibit G, the others were very poor copies, and I would like to substitute these and give the Court new copies.

THE COURT: All right, that is fine.

MR. HOFFMAN: At this time the plaintiff would like to introduce two of defendants' answers to defendants' interrogatories, one of them, the first one, is the defendants' answer to plaintiff's Interrogatory No. 5-A, 2 and 3, and we are introducing A-2 and 3 parenthetical, and we are introducing the following pages of the exhibit to their answer. The pages to the exhibit are pages three, six, seven, 13, 16, 17, 21, 22, 25, 26, 31, 34, and 41.

This answer shows the Spokane County circulation of various advertising media employed by N B of C, that is, radio stations, magazines, newspapers, and the like, and the purpose for which we are introducing it is to show the existence of some presence of N B of C in

Spokane, and we believe that that would relate to the existence of the wings effect as our expert, Dr. Smith, testified.

THE COURT: All right, is there any objection to that?

MR. MOEN: No objection.

THE COURT: All right, it will be admitted.

MR. HOFFMAN: We would also like to introduce [613] defendants' answer to plaintiff's Interrogatory 23, schedule I, pages one and three, and Schedule II,—excuse me, pages one through three.

MR. JOHNSTON: Could you read that again, I couldn't catch it.

MR. HOFFMAN: We would like to introduce from the exhibit to the answer to interrogatory 23, Schedule I, pages one through three inclusive, and Schedule II, pages one through three inclusive.

THE COURT: And what does that relate to?

MR. HOFFMAN: That shows N B C solicitations of business in Spokane, and that is also related to our wings argument.

THE COURT: All right. Now, is there anything further, Mr. Torre?

MR. TORRE: The plaintiff rests, your Honor.

THE COURT: All right. Now, before you make your motion in connection with the case, which I anticipate you will, Mr. Moen, I want to remind you that because of Mr. MacMurray's late arrival, I guess it wasn't late, but it was after they had completed the testimony of all their other witnesses, I cannot, in ruling on your motions, consider the testimony of your expert, you understand that.

MR. MOEN: Yes, that is my assumption, your [614] Honor. We will treat the case as if they had concluded before we put on any witnesses.

THE COURT: Yes. Of course, the main witness being your expert, that you have called so far.

MR. MOEN: Yes.

THE COURT: Of course Mr. Carlson didn't get into anything that I considered to be real critical.

MR. MOEN: I believe that is correct.

At the close of Plaintiff's case, defendants move to dismiss this case for the reason that the plaintiff has totally failed to prove this merger, if consummated, would violate Section VII of the Clayton Act in the manner alleged in the complaint, or in any other manner. In support of the motion I will call to the Court's attention that Section VII of the Clayton Act prohibits a merger, the effect of which may create a monopoly, or may substantially lessen competition in any line of commerce, in any section of the country. All the authorities are agreed that in a case of this kind the burden is on the plaintiff to prove by a preponderance of the evidence that in reasonable probability, a lessening of competition will occur in some section of the country as a result of this merger.

There is a vast array of case law, your Honor, which holds that the word "may", as used in Section VII [615] of the Clayton Act, means reasonable probability, in the reasonably foreseeable future. It doesn't mean just a possibility, or as some Courts have expressed it, we are not dealing with ephemeral possibilities, we are dealing with practical realities in terms of reasonable probability. So the issue here is whether or not they have proved that there is going to be a lessening of competition in reasonable probability, in the reasonable foreseeable future, resulting from this merger.

The Court, in passing on this motion, will bear in mind that there is no direct or actual competition between these two banks. This is conceded, these parties have agreed that there is actually no competition at the present time, so the only issue is whether or not they have proved that the competition will develop some time in the future. And bear this in mind, your Honor, that in order for there to be competition, the two banks must some day in the future get together in the same banking market, where they are competitors. And if they do this, that in itself doesn't entitle them to an injunction, because they must also prove that this lessens competition in some section of the country. So it must be a substantial, a significant lessening of competition at some time in [616] the future. Now in this case at the present time

there isn't any scrap of evidence to show where in the future these parties will ever get together and compete, unless it be in the City of Spokane, and in the City of Spokane they agree that it hasn't happened as yet, and of course if there is a merger, it can't happen. So the only question is whether or not the result of that merger will be to lessen the degree of intensity of competition in the Spokane banking market.

There is no proof in the record that N B of C as a potential competitor in the Spokane market will enter the market in any manner other than by this merger. And of course they must show that we not only can, but that we will enter in some other method, in the reasonable and foreseeable future.

There is no proof in this case that even if the defendant could enter the market in some other manner, that it would do so. There is no proof in the record that even if it were to enter the market, that there is any reasonable probability that such entry would cause any material or substantial lessening of competition in any section of the country.

We submit, your Honor, that there is a total failure on the part of the plaintiff to prove their case, and consequently the action should now be dismissed, and [617] and I so move.

MR. HARTMAN: Your Honor, the intervenor will join in that motion to dismiss.

THE COURT: Do you want to make any statement?

MR. HARTMAN: No, your Honor, I don't want to make any statement.

THE COURT: Well, actually the testimony that bears on the anti-competitive, as contrasted to the pro-competitive effect of the merger, the prospective merger, is what reasonable inferences I draw from the exhibits that are introduced, and the testimony of Dr. Smith. I am again reiterating that I am not considering the testimony of your expert, which was in direct conflict with the testimony of Dr. Smith concerning the effect of this merger. Whether I give more credence to his testimony, or more credence to Dr. Smith's testimony is not presently material to ruling on the motion.

Dr. Smith did testify that there would be an anti-competitive effect if the merger were permitted, in his opinion. He qualified as an expert to give that testimony, and he based that testimony on what he called the wings effect. That is one basis for it, because it was his opinion that when the other banking institutions in the banking market in the area, in the [618] conduct of their banking business, were aware, constantly aware of the potential entry, and I can't say possibility of entry, I don't like that word, but the probability that N B of C would enter. That was the wings effect, that therefore in some manner these present banking institutions that operate in the commercial banking area in the Spokane market, I am going to call it that, would, because of awareness, be more competitive with each other, and to avoid the entrance of N B of C, would operate their prospective institutions in a pro-competitive manner. That was his testimony. Am I reciting it correctly? I think that is the way I understood him?

MR. TORRE: Yes, your Honor.

THE COURT: Then he testified further that in his opinion, institutions such as Seattle-First, and N B of C, the first and second largest, are less competitive because they meet so many places, they meet at cocktail parties, they may be rivals, but they are not in the true sense competitors, and that a unit bank like Washington Trust would be more apt to be a competitor in the banking market than a national bank—I guess Washington Trust is not really a unit bank, I think they have several branches, which is my recollection—that they would be more competitive than N B of C would [619] be in the Spokane market, because of what he described as the rivalry, as contrasted to the competitive status of the bank. That was his testimony. Now of course that was all opinion, but on the other hand if he qualifies I guess I am obliged to take that opinion evidence as evidence.

One of the unfortunate things about this position, as I have previously stated, is the fact that I do not live in a vacuum. I have lived in this community almost all my life, and when he says, and I am going to let his testimony stand, when he says that the big national banks

aren't competitive, that they are just rivals, well that hasn't been my experience, however my experience doesn't count in this case, I have to take his testimony, although I can draw on my experience in evaluating it, certainly.

I suppose the question before me is, did they make a prima facie case, with absolutely no evidence to contradict it. That is what I am up against. Now I have had experience as a Judge for seven years and know that granting motions of this character is kind of hazardous, I don't care, because I do it a lot, I am one of those who does do it, or, like sending things to juries to cure your errors, you have heard of that method of operating, where you say well, we will send [620] it to the jury because they will find the way I would anyhow, and sometimes they don't, and then you're really in a predicament.

But, getting back to the situation here, there is some evidence—what weight do you wish to give it is something else again—but some evidence, because of his opinion, and that is the only evidence, save and except what inferences I may draw, to substantiate the opinions he gave, and from what the exhibits are, and frankly I think I should deny the motion for that reason, but also for another one, and that is that it would be in the best interest of the defendants to have the whole issue laid out here as far as the other issue, which is in addition to your opinion evidence, whether or not, assuming there is some sort of an anti-competitive effect, whether the needs of the community outweigh it. And I think just on that account I would deny the motion and hear your testimony in that connection, and then I will make a decision and you will have the opportunity to renew your motion at the end of the defendants case. I think it is very thin, counsel, really thin. Of course I don't need a comment from you because I suppose you think it isn't, but I think it is extremely thin, it just rests on opinion, and these exhibits, although they show undoubtedly the interest of [621] N B of C in getting into the market, they also show that the N B of C, if you want to categorize them as such, is what you would call a friendly competitor. Well, a friendly competitor can be a real tough one, to the point that they don't care par-

ticularly whether you go broke or not. They can smile and have a drink with you, and say behind your back well, it is too bad, but you have made some bad loans, and you are down the drain. So I think this rivalry, as contrasted to competition, I have my serious doubts about that.

All right, I will deny the motion, and we will go ahead and you can present your evidence so far as the balance of the case is concerned.

[622] THE COURT: Is there anything further?

MR. MOEN: Yes, your Honor. Mr. Hartman has a witness here and for convenience he would like to be able to complete his testimony today.

THE COURT: All right, put him on. Put him on this afternoon and we have to we will continue on with him until we get through with him.

MR. HARTMAN: Yes, your Honor. The Intervenors will call Mr. Richard Bennett.

## RICHARD G. BENNETT,

called as a witness by and on behalf of Intervenor, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. HARTMAN:

Q Will you state your name for the record, please?
A Richard G. Bennett.
Q And what is your address?
A Potlatch, Idaho.
Q And—

THE COURT: You don't have to speak into the microphone, Mr. Bennett.

Q Mr. Bennett, what business are you in?
A Lumber manufacturer.
Q And I suspect that the Court is familiar to a certain [623] extent with lumber manufacturing, but for the record will you give us a brief description of what this business entails?

A Well, we buy timber and log it and saw it and cure it and sell it on the open market.

Q Could you give us an idea of the approximate gross sales for the company?

A Our gross sales were around ten million dollars.

Q And how about the number of employees?

A Oh, total employees, we employ around 300.

Q Would you give us some idea of the type of financing a business such as yours needs over the years?

A Well, our needs have changed some over the years. We have to have financing and be able to grow and buy timber and carry our inventory and our accounts receivable and take care of any remodeling or rebuilding and so forth. That along with pollution control and things like that.

Q Well, what financing would be involved, for example, in something like buying timber?

A Well, when you are buying timber, it depends on the type of sale. If you buy government timber you are required to put in a small down payment and the state requires a larger payment, and sometimes—well, I mean in private purchases sometimes you have to pay complete cash for the purchase.

[624] Q Now you say you need complete cash; how would you go about paying him that?

A Well, we get on the telephone and talk to the bank real quickly.

Q And how about financing your inventory, in terms of the amounts of financing, what is involved there?

A Well, our inventories sometimes require approximately a million dollars, the winter inventory.

Q Now, have you expanded your facilities in recent years?

A Yes, considerably. We produce and manufacture approximately 80 to—well, about 80 million feet per year now. Ten years ago we produced about 10 million feet.

Q Are there other lumber producers roughly in a similar situation to your company around in the area?

A Yes, there are five or six left.

Q What banks do you look to presently for financing?

A Washington Trust.

Q Have you had occasion in the past to reach the loan limits of the Washington Trust Bank?

A Yes, we have.

Q What were the circumstances of that?

A Well, we were building a new sawmill, not a new one, but I should say an automatic sawmill, and we exceeded our costs, they ran over, and we run up to the limit and just had to stop construction, we had to stop while we [625] went out to look for additional financing.

Q When you reach a limit like that because of expanding your facilities, does that also involve your other financing, your inventory and things like that?

A Well, it is a combination of many things that causes us to reach a limit, of course, and it pretty well curtailed our operations for a while. We didn't shut down, I mean, but slowed them down while we attempted to reach additional financing.

Q Now what about participation, why wasn't that an answer for you, or was it?

A Well, we attempted this and Washington Trust also attempted this and it happened to be a very bad time, it was right during the tight money policy of '69 and '70 so there was no money available at that time.

Q What did you do then?

A We tried insurance companies, we tried—well, first, of course, I talked to Washington Trust and then talked to insurance companies and the insurance companies wouldn't come up with any and that was because of the state interest rates, the usury in the State of Idaho was too low and they weren't interested, and then the Federal Land Bank had the money and were willing to make the loan but we had to reorganize our corporation to become eligible and that meant a corporate split, and [626] then we had to apply to the Internal Revenue for permission and got turned down, of course, and it worked out for some months, it was six months or a year before we finally got it.

MR. SILVERMAN: At this time, your Honor, we object to the admission of this testimony. The witness has stated that his business is located in Idaho and he personally is located in Idaho and requires his financing for facilities in Idaho.

The government contends, your Honor, that the convenience and needs of the community to be served as that term is found in the Bank Merger Act of 1966, are to be judged in the relative geographical market in which the anti-competitive effects of this merger are to be assessed.

The intervenor and plaintiff have stipulated, that the relative geographic market in which the anti-competitive merger ought to be assessed is the Spokane metropolitan area.

THE COURT: Well, you know where Potlatch, Idaho is, don't you?

MR. SILVERMAN: No, I don't, your Honor.

THE COURT: Well, Potlatch, Idaho is—I [627] don't know whether I want to tell you or not. Well, I will tell you—I went over there to fight, to box, in 1929. It isn't very far from Pullman. How many miles is it?

THE WITNESS: About twenty-three miles.

THE COURT: So, you see, I went over there to try to make a little money to stay in school so Potlatch really is in the Spokane market area.

MR. SILVERMAN: It's not in the Spokane metropolitan area as we stipulated that area to be for purposes of this case, your Honor.

THE COURT: Well, I thought we had more than just the metropolitan area in this case. I thought you were assessing the competitive effect in the market area as contrasted to the banking market area. Is that what you're talking about?

MR. HARTMAN: Well, your Honor, it is the intervenor's position that whatever the relevant section of the country is for Section 7, that has no controlling effect.

THE COURT: Well, I will overrule the objection. Go ahead and let him answer it, because I—well, let him answer it.

MR. HARTMAN: Would the Reporter read my last question? Would it be convenient to find my last question [628] readily there?

THE COURT: Go ahead and start over again. I talk too much.

Q (By Mr. Hartman) We were talking about your solution to,—well, about reaching your Washington Trust

Bank lending limits and you had gone into the Federal Land Bank and secured financing from them. Is that what it was?

THE COURT: He said finally that after approval a year later, is that what you said?

THE WITNESS: It took us about a year to get it done.

Q (By Mr. Hartman) Were the costs higher, in your belief?

A Yes, tremendously higher. We had to hire attorneys and local accountants and an accountant in Washington, D. C. and had to have our land cruised and it cost us considerably more than normal financing.

Q Would it have been beneficial to you if your bank had been larger and capable of helping you out?

A Yes, we felt so.

Q Would you characterize Washington Trust's reputation insofar as financing is concerned,—to your knowledge?

A Well, they are reputed to be, in our country, the bank to finance the lumber people. They finance all of the lumber people in my area and all of our competitors and [629] ourselves and we are all pretty well financed by the Washington Trust Bank. They keep abreast of our business and they also always have and so they pretty well handle most of the accounts.

Q Other than the banks in the area—or, excuse me, are there other banks in the area which to your knowledge are not as interested in the lumber business, to your knowledge?

A Well—

Q I don't want to get into specifics but—

A Well, there has been in the past. I don't know their present positions, we don't talk to them.

Q Is it your belief that it would be beneficial to the industry in your area to have the Washington Trust with its interest in the lumber industry—would it be beneficial if it were to be a larger bank, in other words?

A Yes, it would be for ourselves particularly because our company is growing and, as I say, our normal financing now and our inventory and accounts receivable pretty well run up to the limit, which means if we go into an



expansion program—and of course in this day and age with pollution control and automation and the costs you have to have—you have to be constantly planning new programs, new expenses, and we're just about to the limit and we either have to save the capital ourselves or [630] adjust our inventories or something of that nature or look to outside financing and work it out.

Q What effect, if any, does having a source of adequate financing have on your ability to compete with other mills in the area?

A Well, if we didn't have adequate financing we just couldn't compete, if we didn't have adequate financing.

Q You buy heavy logging equipment, is that part of your fixed assets?

A Oh, yes.

Q Have you considered leasing such machinery?

A We considered it briefly, not too often.

Q Would it be beneficial to you if your banking connection had or could give you advice and counseling in leasing machinery, do you think that would help?

A I think counseling is always good.

MR. HARTMAN: I think that's all I have, your Honor.

THE COURT: I have a question and then you can go ahead with your cross-examination, Counsel. This is for the record here.

Potlatch is in what is known as North Idaho?

THE WITNESS: Yes.

THE COURT: And the largest banking institution in Idaho is located where?

[631] THE WITNESS: Boise. And then Salt Lake City.

THE COURT: And what is the reason that you go into Spokane rather than Boise?

THE WITNESS: Well, we used to do business—when we were a small company and just getting started we did business with the local Idaho bank, a branch bank in Lewiston. We had a Clarkston State Bank owned by one of the officers of the First Security Bank, in Idaho, and then we had the Idaho First National, we had two banks and as long as we put money into the checking account or the savings account we did business; but we found that when

we wanted to borrow money to finance lumber or saw mills, they were not interested in doing business. They would loan us money on the real property and on the homes and things like that but not on the lumber because they didn't understand and didn't particularly want to understand it.

THE COURT: All right. Does the distance—how far are you from Spokane?

THE WITNESS: About seventy miles from Spokane; seventy miles.

THE COURT: How far are you from Boise, Idaho?

THE WITNESS: About 330 or 340 miles.

THE COURT: That's all I have.

MR. SILVERMAN: Your Honor, I understand that [632] you overruled our objection but I would like to clarify that objection, your Honor, for the record. I am referring you to intervenor's pretrial statement at page 12, your Honor, and I quote:

"Intervenor contends that the community to be served by the convenience and needs benefits of this merger will be at least as large as the Spokane metropolitan area or those benefits can be deemed to serve a larger area"—

It is the government's contention that the area in which convenience and needs are assessed is the same relevant geographic market.

THE COURT: Well, if I read Justice Brennan's opinion correctly in the case that you had me read, you would want me to consider more than just the downtown area of Spokane. That would include the market area. He said there in the Philipsburg case, he said there that you just can't consider Philipsburg. Isn't that what he said?

MR. SILVERMAN: Yes, your Honor.

THE COURT: And that's what I am going to do in this case. All right, I understand your objection and it is overruled. I will let the answer stand.

You may cross-examine.

[633] CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr. Bennett, what was the income of your company in 1972?

A Well, we are on a fiscal year so I can't tell you that.

Q When was the end of the last fiscal year?

A Well, I represent seven companies but our total income would be something like a million dollars net income.

Q And—

A (Continuing) Well, combine all those—the lumber products, $400,000; the tree farms, a couple of hundred thousand dollars; Trident Lumber Company, and the other companies—

Q (Interposing)—That would be the combined net. Was that an increase from your previous fiscal year?

A Oh, yes.

Q And was that income an increase from the year that preceded that one?

A Yes.

Q Would you characterize your business as steadily growing?

A Except for 1969 and 1970, but the best year we ever had was in 1968-1969.

Q Did your net income fall in 1969?

A Well, it fell in the fiscal year in '70, it fell, threw [634] us out of the picture.

Q What is your current credit rating?

A Combinationwise or individual?

Lumber Products has a net worth of a little over a million dollars; J. D. Lumber has—well, the tree farm is a little over a million dollars and J. D. Lumber has a little over six hundred thousand and Seaview Logging has a net worth of about $25,000, and Transport has a net worth of about $200,000—those are net worths. The Bennett Sales Company has a net worth of about $300,000.

Q Would you slow down for the reporter please. I think he might be missing—okay. How far did you say you were from Spokane?

A Seventy miles.

Q And how far is your company from Spokane?

A About 75 miles.

Q Do you consider your company to be part of the Spokane metropolitan area?

A Yes.

MR. HARTMAN: Your Honor, I am going to object to that because he's got a technical definition, and he

doesn't know what it is. He doesn't know what his definition is. If you will give him your definition, I think we could expect to get a usable answer.

[635] THE COURT: Well, I understand. What he thinks is that Spokane is a big city and trading center for his area, is that it?

THE WITNESS: Yes, right.

THE COURT: Is that what he says?

Q Then you consider Spokane to be further than the Washington-Idaho border? Then you consider Spokane to intrude into Idaho?

A Well, I do, yes.

Q Okay. Do you have any other banking relationships, either personal or business, other than the Washington Trust Bank?

A Well, we have other accounts. I have a personal account, yes, in a local bank.

Q Do your businesses have any other banking relationships?

A Let's see, we have—the logging company has kept an account in a small bank in Idaho and the First Bank of Troy, J. D. Lumber has a Clarkston bank checking account, the National Bank of Commerce.

Q The National Bank of Commerce?

A Yes.

Q How much of your banking that you have in your business do you do with banks other than the Washington Trust Bank?

A Are you talking about deposits or borrowing?

Q I'm talking about all your business banking relationships. Just give me an approximation.

[636] A All of our banking as far as our financial arrangements, as far as loans, are 100 per cent Washington Trust Bank.

Q Well, you just told me your business had other accounts.

A Checking accounts, not for borrowing any money.

Q I mean all your banking relationships. You only have checking accounts at banks—

THE COURT: All right, that's immaterial. Proceed.

A Well, all we do is put money into local checking

accounts for the local bills but all the financing that we do is through the Washington Trust Bank.

THE COURT: All right.

Q Now, when you are in need of money, do you only approach the Washington Trust Bank?

A Yes.

Q Have you ever approached any other bank than the Washington Trust Bank?

A Oh, yes.

Q Did you ever approach any other bank within the last year for money?

A No.

Q It is conceivable then, is it not, that there are innumerable banks that would lend you money other than the Washington Trust?

A Well, I really can't answer that. All I can say is [637] that banks are more or less like personal things, you don't change banks like you don't change wives very often without giving it a lot of thought.

Q But you have no personal knowledge that banks in the Spokane market area would not loan you money?

A We haven't solicited their business and they haven't solicited our business.

Q So they are all potential alternative sources of loaning money in the Spokane metropolitan area for your companies?

A I really can't answer that, I don't know that.

Q You never sought that information?

THE COURT: All right, he's answered that. He did verify a statement that I made a couple of days ago that people are reluctant to change banks and I'm glad to hear him say that, that supports my testimony. Go ahead to your next question.

Q Would you once again explain why an overline loan with N B of C and W T B is unattainable for your purposes?

A Well, I don't know about N B of C. We talked to Washington Trust Bank and at the time we were after the money we realized we were going to need more than we originally thought and it was in the fall, the late fall or winter of 1967 and at that particular time money was awfully tight. As a result interest rates [638] were rather high and there wasn't any money available. Prior to that

time, the insurance companies and we talked to two of them earlier and they were not sure they could take care of us if we needed any excess. By the time we needed it they were no longer interested. That's why we don't change banks.

[639] Q Just let me clarify something. You said that insurance companies at one time said they could take care of you and then they subsequently—

A (Interposing) The insurance company expressed that they were interested a year or so prior, in 1968 when we were in the planning process.

Q Let's get back to the W T B; what did they tell you in relation to their inability to loan you money during that money crisis, as you referred to it?

A They said they were up to their limit or reaching our limit and wanted to be careful and said they had to be careful because they have a hard time placing any excesses over and above their limit for any extended time.

Q Are you aware of the fact that W T B does correspondent banking with N B of C?

A Not particularly.

Q Did any member of W T B organization mention the fact that they were unable to obtain corresponding banking from the N B of C?

A No, they didn't.

Q Do you understand what corresponding banking is?

A Yes, I do, but I didn't ask them who they were soliciting funds from and they did not volunteer it.

Q And you are of the opinion, are you, that if N B of C [640] and W T B are merged that you would be able to obtain that financing?

A We think so.

Q Why?

A Because we are doing business with the same people that we have always been doing business with and they know our company and they know the lumber business and they know our history.

Q Would you not be dealing with a new corporate structure as opposed to W T B?

A Well, I presume we will be, yes.

Q Has W T B given you any assurance that once they merged with N B of C, if it is in fact consummated, that you will be able to obtain adequate financing?

A Well, they told us they would have a much larger limit, yes.

Q And did they tell you in fact that you would be able to get a loan?

A No, we haven't asked them for a loan recently and we don't need a loan right now, right this minute, so we haven't asked them.

Q So, assuming that the W T B has a current corresponding relationship with the N B of C, okay, and assume that there would be a money crisis in the near future. Do you think—

[641] THE COURT: (Interposing) Now what do you want to know now?

MR. SILVERMAN: Do you think that W T B will experience similar difficulty in getting money over and above their limit?

THE COURT: That is so speculative. You wouldn't object to it, Mr. Moen, so I will object to it because it is so speculative and it wouldn't be of any assistance to me, and you are making a double assumption there, and how could he answer that question?

MR. SILVERMAN: Have you ever approached N B of C for a loan?

THE WITNESS: No.

Q (By Mr. Silverman) You don't know if tomorrow if you approached them for a loan—

THE COURT: How would he know that?

MR. SILVERMAN: The point is established that there are in fact alternative sources of loans and—

THE COURT: Well, he already testified he didn't know because he went there and the reason he didn't is because his bank understands his business and he is very reluctant to change banks. He may probably change wives but he is very reluctant to change banks. That's the way I understand it.

THE WITNESS: Right.

[642] MR. SILVERMAN: One final question then, Mr. Bennett:

Q Do I understand you correctly to say that this—that at this time you do not have adequate financing from W T B and that if a merger is consummated you have no assurance that you will have adequate financing?

A I don't think I understood you. Do I understand you to say that—

THE COURT: He didn't say—

MR. SILVERMAN: Okay.

Q Is there adequate financing presently from W T B?

A For all we presently need, yes. What we need today, it is adequate, yes. We have already went through the Federal Land Bank for a loan and we already have that; those are long term funds.

Q What bank?

A The Federal Land Bank.

THE COURT: Federal Land Bank.

A (Continuing) Presently we have an adequate line of credit, our line of credit is adequate. Our limits are adequate presently today. But what I am saying is that tomorrow or next month when we design a new planer mill or buy another sawmill, then we'll be right up against our limit or close to the limit and we are continually up close to our limit with the inventory [643] financing and so forth. So if we want to expand or buy something new we have to allocate our preferences right now in order to stay under the limits.

Q Could it be possible to meet your needs under those circumstances with both W T B and the Federal Land Bank?

THE COURT: Oh, that isn't appropriate, I don't think, Counsel. It could be possible that he could get money from the Federal Land Bank, he already testified to that, that's where he had to go to get it.

MR. SILVERMAN: Is that less than necessary to meet his needs sufficiently—

THE COURT: Well, we're going off on a tangent here. I mean you are, I'm not. I'll tell you why. Meeting somebody's needs as far as loans to him is concerned has more than just the capability as far as the Federal Land Bank is concerned, there is more than that involved, Counsel, he has already told why he wanted to do business with the Washington Trust. He says they have expertise in the field that he is in and they want to do business with him and that's one of the reasons. Just saying, "Well, we've can get enough money, or you can

go and get it from the Federal Land Bank," that isn't the issue here.

[644] MR. SILVERMAN: Well, your Honor, the government contends that that is not the only issue, but a final question would have to establish the fact that Mr. Bennett does not know presently whether or not the alternative sources in the Spokane metropolitan area would adequately supply his loan needs, aside from this proposed merger.

THE COURT: I don't accept that as being a statement of fact. I don't accept that at all, it is your contention, but it certainly is not a statement of fact. He has already testified that these other banking institutions, so far as he is concerned, that he has knowledge of, are not interested in making loans to his type of business.

Q (By Mr. Silverman) When was the last time you appeared at Seattle-First to apply for a loan?

A In the Seattle-First, I have never appeared in there.

Q So you don't know whether or not they will be able to give you a loan?

A No, as I stated, we did business with other banks before, and when we got one bank to take care of us, we didn't go looking for any further.

Q When was the last time you appeared at the Old National Bank for a loan?

A I never—

[645] THE COURT: I think, counsel, I am going to stop this cross-examination. I think we have gone far enough.

MR. SILVERMAN: No further questions, your Honor.

MR. MOEN: I have one question, your Honor.

BY MR. MOEN:

Q If this merger were approved, Mr. Bennett, and the loan limit of the Washington Trust Bank were increased by about seven and a half million dollars, would that be a sufficient limit to service your needs?

A It would be presently, and as far as we can project, for the next ten years, yes.

MR. MOEN: Thank you, that is all I have.

THE COURT: All right, is there anything further from you, Mr. Hartman?

MR. HARTMAN: If I could ask one more question, your Honor?

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. HARTMAN:

Q Mr. Bennett, there has been testimony on the part of the plaintiff's witnesses here that it may take up to ten years for a bank to come into the Spokane market. Can you wait ten years for what you foresee in the way of [646] financing needs?

A No, we need our financing whenever we need it. In other words, as I say, presently we are not looking for additional financing today, or as far as I know tomorrow, but when something comes up you have to be able to move quickly, so we are looking to see that the bank limits get raised, yes.

Q Not in ten years?

A No, not in ten years.

MR. HARTMAN: Thank you, that is all I have.

THE COURT: All right, Mr. Bennett, you may step down. May this witness be excused?

MR. HARTMAN: Yes, your Honor.

MR. MOEN: Yes, as far as we are concerned, your Honor.

THE COURT: All right, Mr. Bennett, you may be excused.

All right, now we have concluded today's session. You are aware of the fact that I have a criminal docket in the morning, and some motions. I anticipate that I will be through by 11:00 o'clock. Can you be here at 11:00 o'clock so we can continue this case and go until noon. Then we will go tomorrow afternoon from 1:30 until the usual 4:30?

MR. MOEN: That is satisfactory with us, your [647] Honor. I have some witnesses that can be here at that time.

THE COURT: All right, I just wanted to tell you, that it may be a little later, or it may be a little earlier, but the docket is comparatively short, we have a couple of revocations that may take a little time, but we will expect you here about 11:00, and we will continue with the trial.

All right, court will be at recess.

(Evening recess)

[648] REPORTERS' CERTIFICATE

We, W. L. Mayrand, Gerald J. Popelka, and Paul C. Tveten, official court reporters for the United States District Court, for the Western District of Washington, do hereby certify that the annexed and foregoing is a full, true and correct transcript of proceedings had in the above-entitled and -numbered cause, on the date hereinbefore set forth, and we do further certify that the same has been prepared by us, or under our direction.

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[649] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

No. 237-71C2

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE, ET AL., DEFENDANTS.

[Filed in the United States District Court, Western District of Washington, Jun. 22, 1973, Edgar Scofield, Clerk. By M., Deputy]

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and -numbered cause in the above-entitled Court before the Honorable WILLIAM N. GOODWIN, United States District Judge, on Friday, January 12, 1973, at the United States Courthouse, Tacoma, Washington.

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VOLUME V

[650] APPEARANCES

RICHARD J. TORRE,
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RONALD SILVERMAN, Attorneys, Antitrust Division, Department of Justice, appearing for and on behalf of Plaintiff;
JAMES WILLIAM JOHNSTON and
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DANIEL M. GRIBBON, and
CHARLES LISTER, (of Covington & Burling), appearing for and on behalf of Defendants;

JON HARTMAN and
THOMAS McLACHLEN, appearing for and on behalf of Intervenor.

[651] PROCEEDINGS

THE COURT: All right, Mr. Hartman, do you want to call your next witness.

MR. HARTMAN: Yes, your Honor. First I have a preliminary matter. Yesterday Mr. Silverman made an objection to the testimony of Mr. Bennett, as he was from Idaho and outside the section. You allowed Mr. Bennett to testify, and I know he referred your Honor to the Phillipsburg case, and I have two cases which I think support my position that when the convenience and needs are involved, you can look at a larger area. One of those is United States vs. First National Bank of Jackson, which is 301 Fed. Sup., at 1161, and the other is Washington Mutual Savings Bank vs. the FDIC, that is Judge Sharp's opinion. In that opinion is an excerpt from the House Committee report, and I believe that is on page 9.

THE COURT: Well, I thought I read something that Justice Brennan wrote about the fact that the District Judge was in error in that Philipsburg case because he just considered the needs within the very small area of the city.

MR. HARTMAN: That is correct, your Honor.

THE COURT: That is what he said, isn't it?

[652] MR. HARTMAN: He said that you cannot use an area smaller than the section of the country that is used for the anti-competitive effects. You can't look at the little area and say—

THE COURT: That was his criticism of the District Judge's decision.

MR. HARTMAN: Yes, and my point is that you can use an area that is larger than the section of the country.

THE COURT: Now, you can sit down, Mr. Silverman, I don't want to hear from you yet. I will let you cross-examine the witness.

If you can't use an area smaller, what follows: Well, that you are supposed to use an area that is larger, dosen't it?

MR. HARTMAN: I agree with that, yes.

THE COURT: Doesn't that make sense to you?

MR. HARTMAN: From the legislative history as is contained in Judge Sharp's opinion, and all I want to make sure is that your Honor has a copy of this opinion.

THE COURT: Is that Judge Sharp from this District?

MR. HARTMAN: Yes, your Honor. That is Washington Mutal Savings Bank against the FDIC. [653] I don't know whether the opinion is even published yet.

THE COURT: When was that tried?

MR. HARTMAN: It was in the middle of last summer. It may be published, but I don't have the citation for it so I will just provide you with a copy of it, your Honor.

THE COURT: All right. Did you say he goes into the legislative history?

MR. HARTMAN: There is an excerpt from the House Committee Report on page 9.

THE COURT: Well, Justice Brennan did the same, didn't he?

MR. HARTMAN: Well, not to the effect that it could be larger.

THE COURT: All right, go ahead.

MR. HARTMAN: We would now like to call our first witness.

Mr. McLachlen will examine this witness.

MR. McLACHLEN: The intervenor will call Mrs. Bruckner.

[654] BETTY BRUCKNER,

called as a witness by and on behalf of Intervenor, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McLACHLEN:

Q Would you state your name?

A Mrs. Betty Bruckner.
Q What is your address?
A North 3224 Sipple, Spokane, Washington.
Q What is your place of employment?
A Gonzaga University.
Q And what is your position there?
A I am financial aid adviser.
Q Then briefly, very briefly, what does this position entail?
A Analyzing students' needs for financial assistance, and trying to put together something in the way of a package of either federal or university funds to help them finance their education.
Q Specifically, in helping them to get financing, how do you get involved, what happens? Can you describe that?
A Well, we award as much as we can through the college by what we are given through the federal government and other areas, we go into outside loans or guaranteed [655] loans, scholarships from private organizations, and any other source available to the students.
Q Do you send them to banks?
A Yes, we do. The guaranteed loan program, the federally insured loan program, we participate or we encourage students, if we are not able to help them, if we can't help them through the university, we encourage them to go to the guaranteed loan program.
Q Do you ever deal with Spokane banks?
A Yes. I don't personally, we send the students to the bank.
Q That is what I meant. How many sources would you say are there, reliable sources, in Spokane for student loans?
A I feel that we just have one.
Q And what is that one?
A It is the Washington Mutual Savings Bank.
Q Would it be helpful to you to have a second source?
A Oh, definitely.
Q A second source for student loans?
A Yes, definitely.

Q About how many applications do you get per year?
A I would say in the neighborhood of 650.
Q And how many Spokane residents?
A Just guessing, I would say we have about 400 Spokane resident students, that is, residents of Spokane.
MR. McLACHLEN: Thank you. I have no more [656] questions.

## CROSS-EXAMINATION

### BY MR. SILVERMAN:

Q Mrs. Bruckner, how many students at Gonzaga currently have some sort of financial need?
A Financial need?
Q Or need of loans. Approximately, why don't you give me a percentage of the students that are in need of loans.
A Well, I would say that 50 or 60 percent of our students, and this includes the law school, depends a great deal upon loans.
Q Fifty or 60 percent?
A Right.
Q Fifty or 60 percent of your students are currently having loans, or on some sort of financial assistance?
A That is right.
Q And how many of the remaining 40 percent who do not have financial assistance, need financial assistance?
A I have no way of knowing.
Q Would you have any way of knowing how many students at the university have applied for financial assistance and have not received it?
A It is hard to say. Students apply for financial assistance through our office, and many times they are not eligible, many times they are eligible and we can't help them, so we send them, you know, I'll suggest a [657] federally insured student program, student loan program. How many of them go further, and go on into this, I don't know. We have 650 applicants, or processed that many for guaranteed loans, but the relationship between the two, I have no idea.

Q I would like to focus on the number of students who come to your office whom you cannot help, and whom you send to the banks in the Spokane area.

A The number, it seems like I talk to a dozen students every day about this type of situation, but the actual count, I don't know.

Q Well, can you help more students through the university funds, or through federal funds, than you can by sending them to banks? Or do you send more students to banks than you can help through the university or through federal funds?

A I would say that we help more students through the award system through the college, federal funds and university funds, than we do student loans, although many students will have both. They will have aid awarded through the college, and the rest of it through the guaranteed loan.

Q What type of loan assistance do the banks in Spokane offer the students?

A Other than the federally insured?

[658] Q Well, how do students,—I am not too clear on this—how do students turned down by the university obtain a loan from banks in the Spokane area?

A You mean why you would want to go for a guaranteed loan instead of a loan through the university?

Q Well, I thought you said that a student would first come to the university for a loan, and would only go to a bank if he was turned down by the university.

A The aid awarded by the university is by need, and this need is determined by what is called the parents confidential statement, a statement which the parents fill out, turn it into the school, it has already had an analysis done on it, and by this, the parents' income is analyzed, and from this it is determined what the parents should be able to contribute to the student's education. Many times this is written down on paper and looks real good, but isn't in fact so. Many times the student then will have to rely on the guaranteed loans, because by the paper work that I have to use, that the federal government requires that I use, and this parents confidential analysis, or some statement similar, I can't justify

giving him any aid through the college, but that doesn't mean that that student doesn't need money, and so he will turn to the federally insured student loan program.

[659] Q And how is that program administered, is it administered through the university, or through a bank?

A The federally insured?

Q Yes.

A It is through a bank. The student picks up a loan form from our office, or from a similar office, there are several colleges in the Spokane area, his enrollment is verified through the college, the cost is verified through my office, and then the student takes the application for a loan to a bank.

Q Do you know the approximate percentage of students who apply for that loan through a bank and are turned down?

A I really have no way of knowing. We are notified when a student receives his loan, or actually gets this loan, and for what amount he gets the loan, but how many times he is turned down, or why he is turned down, we don't know.

Q Let me see if I am following you then.

THE COURT: Well, I have been following her.

Q I am trying to focus on the number of students who are turned down by both the university and a bank.

THE COURT: She has already indicated she doesn't know that.

MR. SILVERMAN: Okay.

Q Are there any types of loans offered in any communities [660] by banks that are not currently offered in Spokane?

A Of that I don't know either. I have no way of knowing.

Q You said there was only one bank currently in Spokane that offers student loans?

A That we can depend on.

Q Would you clarify that?

A There are several banks in Spokane, and in doing a quick analysis of how many banks give loans to students in Spokane, there may be one or two at each of

the banks. We have one bank that has loaned over 200 students, and by this I would say that bank is my only dependable source of the guaranteed loan program. The others have very strict requirements, that disqualify students from getting loans through their banks.

Q Would you have any way of knowing whether Gonzaga University students had less money available to them from these student programs than other university students from other areas of the state?

THE COURT: Are you just going to sit there on that question?

MR. McLACHLEN: Your Honor, I am going to object to it.

THE COURT: Yes, indeed. Sustained.

Q Would you have any way of knowing what the National Bank of Commerce loan program is to students?

[661] A I don't know at this time, no.

Q And you wouldn't have any way of knowing if the National Bank of Commerce has a quota, do you not?

A No, all I know right now is that Washington Trust does not make loans under the federally insured student loan program, and I understand that through the merger they will.

Q Well, how did that information get to you?

A Well, I think basically that is why I am here, to let you know, or to testify that we do need another outlet for these guaranteed loans, or student loans in Spokane, and through this merger, this would provide another outlet.

Q How do you know that?

A I have been told.

Q By whom?

A By Mr. McLachlen.

MR. McLACHLEN: Your Honor, the National Bank of Commerce put that fact in their application, and they will testify to that later on in the trial.

THE COURT: All right.

MR. SILVERMAN: I have nothing further.

THE COURT: All right, is there anything further of this witness?

MR. McLACHLEN: I have two questions, your Honor,

[662] REDIRECT EXAMINATION

BY MR. McLACHLEN:

Q You said that Washington Trust does not make student loans, is that correct?

A That is correct.

Q Do your students need another source for student loans?

THE COURT: She has already testified to that, she said that they did.

Q Can they wait ten years for it?

A I wouldn't like to see them wait ten years, they need it now.

MR. McLACHLEN: I have no further questions.

THE COURT: All right, you may step down.

[663] MR. McLACHLEN: The intervenor calls William F. Barrett to the stand.

WILLIAM F. BARRETT,

called as a witness by and on behalf of the intervenor, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McLACHLEN:

Q Will you state your name for the record please?

A William F. Barrett.

Q And will you state your address please?

A Route 3, Spokane, Washington.

Q What is your position and title?

A President of the Federal Intermediate Credit Bank, Spokane.

Q Could you briefly describe the Federal Intermediate Bank?

THE COURT: Let me see if I know where that is. Is that on the same street as the Sahara, and the new addition to the Ridpath et cetera, that new nice-looking building on the left-hand side going down the street?

THE WITNESS: Yes, your Honor.

THE COURT: I know where that is. I just wanted to identify it.

Q Could you briefly describe your bank and the system to [664] which it belongs?

A Well, very briefly the Federal Intermediate Credit Bank of Spokane is the mother bank, or the bank of discount, or the supplier of wholesale money for some 30 production credit associations which encompass four Northwest states and Alaska. The production credit associations are federally chartered corporations which are owned and controlled by the farmers and ranchers which they serve, and the production credit association, known better as PCA, do supply production financing to farmers and ranchers for their annual needs, sometimes including capital requirements up to seven years. In turn then FICB, or Federal Intermediate Credit Bank of Spokane, our primary purpose then is to supply these wholesale funds that the production credit association put out to the farmers and ranchers. Then of course the same farmers and ranchers own the PCA's, which in turn own our bank. So we are a farmer and rancher-owned institution completely.

Q How about throughout the nation, can you describe that structurally?

A The Federal Intermediate Credit Bank and the farm credit district which we cover is one of 12 such districts throughout the United States.

Q Is that sort of like a Federal Reserve system?

[665] A Some similarity in that we are independent, and quite independent of federal regulations, but our districts do not parallel each other, but we do have the same number and they are similar in size and scope.

Q Why is your bank in Spokane?

A Well, initially the United States was cut up into 12 districts, and our Spokane branch was located in what was then the geographical agricultural center of the four Northwest states, Oregon, Washington, Idaho and Montana. At a later date when Alaska became a part of the United States, we were also given jurisdiction over that area. So we cover the five so-called Northwest states.

Q Let me ask you this, who would use your bank? That is sort of a basic question.

A Well of course we are dedicated to providing funds for agriculture in general, and of course the farmers and ranchers, and now fishermen in particular, so to qualify for use of our system including our production credit association a person would have to be a producer of agricultural products and/or an owner of agricultural properties.

Q Can you tell us in a round figure how many farmers your region deals with?

A Right at the moment we have 15,772 active borrower member [666] stockholders in the four Northwest states and Alaska.

Q Could you describe a basic transaction with a farmer, how you get money to a farmer?

A Well, in the first place a farmer would make application to the PCA that has jurisdiction in his area. The PCA would commit itself to supply operating funds for at least the 12-month period of operation. In addition the PCA may commit itself to supply money for capital items up to seven years. So this is a commitment, and the farmer draws on this commitment as is needed, as his needs require, during the course of the period of the loan. In the meantime we in effect rediscount the PCA loan in our bank, and we in turn guarantee PCA that we will supply these funds over this 12-month or longer period.

Q And at the time when you make this guarantee, do you actually have those funds?

A Unfortunately no, we are unique in that whereas commercial banks that most people are familiar with have the funds in hand, and issue them as needed, we commit ourselves ahead of time and then put the burden upon ourselves to supply the money as is required throughout the year or longer.

Q. Well let me ask you then basically how do you supply yourselves with this money, where do you get it? [667] A Well, 93 percent of our total funds are provided through the sale of debentures on the public market, pension firms, commercial banks, all large scale investors purchase up to 93 percent of the total funds that we utilize throughout the course of the year.

Q And I take it you get your other seven percent—
A The other seven percent then is provided through commercial bank borrowings, and the same figures prevail throughout the United States.
Q I understand you go to your sister banks too, on occasion?
A Well, only when necessary, and it is usually necessary, because currently in Spokane we do not have adequate sources of dependable large scale sources of credit, and we do have to go outside for the preponderance of our commercial borrowings.
Q So you could go to Seattle, or Chicago, or New York?
A In fact we do, if I may be more specific, the last large requirement that we had was in November of 1972 wherein at that time we needed 27 million of commercial bank borrowings. At that time we only had an eight million dollar line of credit with the one and only large source of available credit in Spokane. So at that time we did have to go to outside sources for 19 million. I use that as the last major example.
Q You mentioned the Spokane source, large source, can you [668] identify that source?
A I think so, I am referring to the Seattle-First National Bank, through its Spokane and Eastern branch, located in Spokane.
Q Do you deal with any other banks in Spokane?
A Not at the present time, mainly because at this time the Seattle-First provides about the only large scale, or large line of dependable credit that is available in Spokane.
Q What about the smaller banks in Spokane, the Old National, or even Pacific National, which is not such a small bank?
A Well, of course there are several aspects to the needs of our credit requirements. Number one is the availability of large amounts of money, and number two is the capability of a given bank to provide that money on very short notice, and number three would be a cost that is competitive, that would allow us not to have to go outside to get more competitive funds. So at the present time there are

no other large sources of credit that really wish to do our kind of business, in that we do have such erratic requirements. Agriculture as you know is very erratic in its needs, our disbursements and needs cannot really be projected very far in advance.

Q And incidentally these needs I understand are growing [669] quite rapidly, is that correct?

A That is correct. The average size loan of a given operator doubles on the average of five to seven years. Right now the average borrower would be about $47,000. Last year our total credit needs serving these many borrowers necessitated finding somewhere $750,000,000 to put through the four Northwest states and Alaska. Then approximately seven percent of that had to be put together from commercial banking sources, and a very small percentage of that was available locally. We do find then that our average volume account will double every seven or eight years, and that correspondingly all commercial banking needs will double just about every seven, eight, up to ten years.

[670] Q This 7% that you like to borrow, can you presently get that in Spokane from your one source? In other words, would you like a larger line of credit, if you could get it?

A It is quite vital that we have a larger line of credit at this time, and then of course within the next few years that requirement will double, so it is already vital, and of course looking for the future, some of us lay awake nights wondering where we are going to get the extra funds, as the needs double.

Q Well, let me ask you this. In the Complaint it was alleged that the Comptroller of the Currency approved this merger on September 24, 1971. At that time what was your line of credit from Seattle-First National Bank?

A At that time our line of credit would be 8 million dollars.

Q What is it today?

A As of today it is 12 million dollars.

Q To what can you attribute this change?

A I hesitate to say, except that we did take advantage of the fact that the merger of National Bank of

Commerce and Washington Trust Bank had been agreed upon, and we did go to our current supplier and did ask for a larger line of credit than had normally been allowed, and they [671] did readily grant it. So we did take advantage of the pending merger in extending this line of credit to 12 million dollars, which is the maximum that that bank can give. I would have to stress again, however, that as of November 1, our needs were 27 million dollars.

Q But you did go to Seattle-First and ask for this increase on the basis of your belief that this merger was being consummated, and that the National Bank of Commerce would be there?

A Yes, sir.

Q One further question: How is it going to help you to have, or would it help you, let's put it that way, would it help you to have the National Bank of Commerce in Spokane on a large regional scale where you can get in touch with them when you need them, at a moment's notice?

A Of course, due to the erraticism of our demands by agriculture, we never know what their requirements will be, how many receipts will come in, how much money will be called upon to be disbursed, we are subject to drafts any minute of the day, and of course we do need large available lines of credit that can cope with this erratic requirement, and since we cannot do it all locally, we do have to count on outside sources that can handle this kind of operation.

[672] Q By having N B C in Spokane, will that allow you to deal directly eyeball to eyeball with somebody, and help you to get a better rate and the benefits which filter down?

A It is quite vital and almost necessary, because it is so inconvenient to carry out an erratic type of operation outside of your own local area. It is inconvenient to do otherwise.

MR. McLACHLEN: I have no further questions.

THE COURT: All right, which one of you wants to tackle this witness?

MR. HOFFMAN: I will try him, your Honor.

CROSS-EXAMINATION

BY MR. HOFFMAN:

Q Mr. Barrett, I think you stated on your direct examination that your office covers the four Northwest states and Alaska?

A That is correct.

Q And that you serve the needs of 15,772 active borrowing members?

A That is right.

Q Can you tell me how many of your, well, I won't say customers, but how many of the farmers and ranchers that borrow from you are located in Spokane County?

A I really can't answer that.

[673] Q Are there more than fifty?

A Oh, yes.

Q Are there more than a hundred?

A Yes.

Q Are there more than two hundred?

A Yes.

Q Can you make any sort of estimate at all, give or take a hundred?

A Okay, a rash estimate would be 750.

Q Now I also believe you testified that you obtained 93% of your total funds through the sale of debentures—

A That is right.

Q —and approximately 7% had to come from other sources?

A Yes.

Q Did you say that the bulk of that 7% comes from commercial banks?

A It all comes directly or indirectly from commercial banks.

Q How would it come indirectly?

A In that we take advantage of sister banks throughout the nation that do have large competitive lines of local credit available in their areas, and they accommodate us by taking advantage of those funds and letting us use them.

Q Would you say that you participate in the wholesale [674] money market, is that fair?

A That is right.

Q And the sources of credit that you rely on are scattered more or less all over the country?

A That is right, in that 300 dealers, including most of whom are commercial banks, 300 dealers purchase each of our monthly issues of debentures, and then they are in turn dispensed from the dealers.

Q I was specifically referring to this other 7%. Do you use any commercial banks other than, you mentioned Seattle-First in Spokane, what other commercial banks do you use as a source of funds?

A Are you referring to a given area?

Q Anywhere.

A Well, of course when we take advantage of our sister banks, who in turn have borrowed from their local commercial banks, we never know from which of those commercial banks the funds were derived.

Q Well, what other commercial banks do you personally deal with in obtaining that 7% besides Seattle-First?

A Only Seattle-First at this time.

MR. HOFFMAN: I just want to make sure I understand this, your Honor, and I hope you will excuse my delay.

Q (By Mr. Hoffman) Let me ask you this, what percentage [675] of that 7% comes from Seattle-First?

THE COURT: Well, if he needed 27 million dollars and could only get 8 million, then it's pretty easy to determine that a little over 30% came from Seattle-First, isn't that correct?

THE WITNESS: Your Honor, in that particular instance, yes, and you would have to relate to each given instance to really say, because roughly speaking we could use a standing line of credit that is unlimited at this time, yet 12 million is our limit, and on the given date referred to we needed 27 million dollars.

THE COURT: That was in November?

THE WITNESS: Yes.

Q (By Mr. Hoffman) Where did that other 19 million dollars come from?

A The other 19 million dollars came from our sister banks who did have access to large competitive sources of credit in their local areas.

Q When you say sister banks you mean other federal intermediate credit banks?

A Yes, and other Farm credit banks.

Q And these are located where?

A In eleven other locations throughout the United States.

Q So the various intermediate credit banks to some extent help each other out by finding funds in their own [676] location and channel them into places that need it?

A That is right, and we pool our surpluses, and those who are short utilize those.

Q And those other intermediate banks obtain those funds that ultimately come to you from various sources of supply throughout the country?

A Yes. They come from commercial banks particularly.

Q Would you describe your bank as a regional or national borrower then?

A Really, we are committed to provide funds regionally, however in the event we did have surpluses, we would make them available on a national basis, but we have not been in the fortunate position of having surpluses resulting from our commercial bank borrowing in the past.

Q When you said regional, you were referring to this five state region?

A Yes.

Q You said that Seattle-First was the only source of large funds that you had in Spokane?

A That is correct.

Q Have you talked to the Old National Bank about possibly providing you with funds?

A The Old National Bank, and I think the same would go for the other lesser or smaller banks, show no interest in [677] our type of erratic credit requirements in the first place.

Q I believe I asked you whether you talked to them about it.

THE COURT: Well, he has answered it by saying that they showed no interest. I will accept that as a fact that he might have talked to them.

[678] THE WITNESS: And, your Honor, I could go one step further and say that we have requested lines of credit of several other banks in Spokane, and the limitations on their line of credit were not favorable to us, nor were they anxious to provide the erratic credit requirements that we require, due to our sudden demands on a daily, weekly or even on an hourly basis.

Q Which of those banks did you talk to?

A We have approached Old National Bank, we have approached,—well, we had approached Washington Trust at the time that the merger was consummated and indicated to Washington Trust that since they would represent a large line of competitive credit we would be interested in applying for the maximum amount they might have available. Other than that, the other banks have not shown the interest, and we have not really approached them because of the impracticability due to their limitations.

MR. HOFFMAN: Would you read back that answer please?

THE COURT: Well, I understood what he said.

MR. HOFFMAN: He said something at the beginning and I have forgotten what it is.

THE COURT: Well, he said the other banks were not interested in their type of requirement, that he had approached the Old National and he had approached [679] Washington Trust, but that the other banks showed no interest. I take that to mean that they never came around and wanted to loan you any money, is that the idea?

THE WITNESS: That is right, and it is not meant to be a reflection upon our institution, but due to the fact of the erraticism of our demands are such that very few banks, unless they are large, and have large amounts of idle funds, want to accept our line of credit.

MR. HOFFMAN: Your Honor brought out the point I was trying to remember.

Q (By Mr. Hoffman) You said that after you talked to Washington Trust Bank that other banks showed no interest. Did Washington Trust show any interest?

A They showed interest, no commitment, but they

showed interest in that National Bank of Commerce has always been willing to provide this line, and they have shown this by being the largest purchaser of our debentures in the State of Washington, and by other means.

Q Has the National Bank of Commerce ever given you a line of credit or helped you meet the need for this additional 7% of funds, of your funds in the past?

A Yes, in earlier days we utilized a line from the National Bank of Commerce out of Seattle, but due to [680] the inconvenience, the use of that line was dropped and we have not reestablished the line of credit.

Q I believe you testified that you would like to have an office of the National Bank of Commerce convenient to your office in Spokane, is that right, that that would be of assistance to you in obtaining loans from NBC?

A That is right, if they were kind of office that had the availability of large amounts of money on a moment's notice, and have the capability or expertise of meeting our requirements, yes.

Q I ask you to assume that N B C did have such an office in Spokane, that they had a branch office of the National Bank of Commerce located in Spokane, would it make any difference to you how many of those offices they had?

THE COURT: Well, why don't you put it more specifically? If they have a couple of branches around Spokane somewhere—

MR. HOFFMAN: I wasn't really driving at that, your Honor.

THE COURT: Well, that's what it sounds like to me. You want to make the assumption that they have a big office over there?

MR. HOFFMAN: In the Spokane metropolitan area. Just a branch office of the parent organization.

Q (By Mr. Hoffman) Suppose you had an office of N B C [681] in downtown Spokane, would the presence of other branch offices of N B C be important to you, in other parts of Spokane?

A I don't know, I really can't answer that, except to say that for our requirements we do need an office that has the scope, the capability, the personnel to provide these large lines that we require.

Q You are familiar with the fact that N B C has total deposits in the neighborhood of 1.8 billion dollars?

A Yes.

Q Did you know that?

A Yes.

Q And you would like to deal with an office of N B C that had access to that kind of resources?

A Including the capability to carry out our needs, not just the availability, the capability, the desire to handle our kind of credit.

Q I would ask you again, do you think you would need more than one such office in Spokane to deal with?

THE COURT: Well now, let's get right down to specifics, Counsel. You want to get him into a little branch, and he has just told you that he has to have the people that can handle the account.

MR. HOFFMAN: That is not what I was driving at, your Honor.

[682] THE COURT: Well, get right to it, then.

MR. HOFFMAN: If I could explain, the point I was trying to make was that the presence of a branch office of N B C in Spokane which they might obtain other than by the merger of W T B would be able to serve this gentleman's needs just as well as an office that N B C acquired by the merger of W T B. It is the fact of the office in Spokane and not the acquisition of it by this merger that is important to his needs.

THE COURT: But he has just repeatedly told you, repeatedly, about four times he has said the fact that they have a branch there is not the critical thing. The critical thing is that they have a branch that has personnel that has, first of all, authority, know how, he has told us that about four times, that is what he wants. Isn't that what you have said? Just not any old branch, but a branch with people who can handle it. Isn't that what you have said?

THE WITNESS: That is right. We would not deal with any branch that wasn't convenient and didn't have these other capabilities.

THE COURT: He has just repeated that over and over again, Mr. Hoffman.

MR. HOFFMAN: I really didn't think that was responsive to the question but I think we have covered [683] the ground.

THE COURT: I think we have too.

Q (By Mr. Hoffman) Just to go back for a minute, you said that WTB expressed an interest in meeting your needs. When did they express this interest?

A I made the first approach to Washington Trust in February of 1972, and followed it up with a letter request more explicitly stating what our needs would be in the foreseeable future, and that was almost a year ago, and those needs have increased since then. I say that because our letter, if it were introduced, would not indicate our current needs. Then they expressed the kind of line of credit that would be available to a consolidation of the banks, and that was of course what we were really interested in, because we did know that the consolidation would probably give us the second large source of credit that we needed in our area.

MR. HOFFMAN: That is all I have, your Honor.

THE COURT: All right, it is noon.

Do you have any more questions of him?

MR. McLACHLEN: No, your Honor.

THE COURT: All right, then you may be excused. No we are going to recess until 1:30 when we will continue with this case.

(NOON RECESS.)

[684] AFTERNOON SESSION

1:30 o'clock p.m.

THE COURT: All right, do you want to call your next witness.

MR. HARTMAN: The intervenor will call Mr. Leroy Johnson.

LEROY JOHNSON,

being called as a witness by and on behalf of the intervenor, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARTMAN:

Q Would you state your name and address for the record please?

A Leroy Johnson. I reside at 924 Rogers Drive, Spokane, Washington.

Q What is your occupation, Mr. Johnson?

A I am a real estate broker in the City of Spokane.

Q By whom are you employed?

A I am in a corporation, Laughary & Johnson. We sell primarily residential homes.

Q Could you give us an approximation of what your gross sales volume might be?

A We do about four and a half million dollars a year in sales, and as I say, it is primarily residential.

[685] Q And what kind of clients do you deal with?

A Oh, the average home buyer and seller.

Q How long have you been in this business?

A I have been in the real estate business 15 years, and in our own business for 10 years.

Q Would you tell us briefly what kind of financing now is involved in residential home buying?

A Well, we have conventional financing, FHA and VA financing.

Q And what sources are presently available in Spokane for the various kinds of financing?

A There are approximately three savings and loan associations, and about four mortgage companies, four or five, I can't recall exactly, I could count them, maybe.

Q Any others?

A Well, recently, within the last six or eight months, we have had one commercial bank that has gotten involved in it, in conventional financing only.

Q Who is that?

A That is Seattle-First National.

Q Now what kind of mortgage loans does savings and loan make?

A They will make conventional loans, FHA and VA.

Q How about a mutual, is that similar to a savings and loan?

A Yes, for example Washington Mutual will make the

same type of loans. In our city, Lincoln Savings makes [686] conventional loans only.

Q And the mortgage companies that are now in Spokane, what do they do?

A They are primarily FHA and VA.

Q Now insofar as your real estate firm is concerned, do you deal across the board with any lender, do you deal with all of these, or what?

A Well, we work for the buyer and the seller, in trying to get the best terms available, and in each case very often it costs the seller money as well as the purchaser, and we try to go to the lenders that offer us the best financing for both parties.

Q How about the Washington Trust Bank?

A No experience in financing, apparently they don't have a program.

Q Now, as I understand from the application filed in my office, and from the hearing in Portland, and from testimony that will be offered in this case, that the National Bank of Commerce has a program that will make available in Spokane conventional loans, well, for example at a seven percent rate. Is that an attractive rate?

A It would be very delightful.

Q Do you think, based on your experience in the real estate field in Spokane, is there a need for a conventional [687] lending of that type?

A Yes, very definitely. Our feeling is this, that if we can get someone in there that offers competitive rates, it gives us a broader scope to reach to when we look for financing, with certain patterns, and if they can offer those kinds of rates, it would be very definitely beneficial.

Q And right now there is only one commercial bank—

A Yes.

Q And if N B C offers this type of loan, how many commercial banks will there be?

A There will be two.

MR HARTMAN: Thank you, that is all I have.

THE COURT: All right, who is up for the plaintiff?

MR. HOFFMAN: I am, your Honor.

THE COURT: He gets two times at bat, how does that happen?

MR. TORRE: He is a specialty player, your Honor.

CROSS-EXAMINATION

BY MR. HOFFMAN:

Q You are employed by a real estate broker, and your firm sells primarily residential properties?

A Yes.

[688] THE COURT: I understood him to say that he was in a corporation, and that the corporate name included his, isn't that right?

THE WITNESS: Yes, that is right.

THE COURT: So he is employed by his own corporation, actually. Isn't that it?

THE WITNESS: Yes, that is right.

Q (By Mr. Hoffman) When you sell these residential properties, do you assist your customers in finding financing?

A This is one of our big jobs yes, to secure financing.

Q You mentioned two kinds of mortgage loans, conventional, as you called it, and FHA-VA, that is government insured?

A Yes.

Q Are the bulk of your sales of homes financing conventionally?

A Well, normally because of the lower down payment with FHA and VA, you will find a little higher ratio percentage-wise of that type of loan. I would estimate that 30 or 40 percent would be straight conventional.

Q Thirty to 40 percent conventional, and would the balance be FHA-VA?

A Yes, FHA, VA, and we could throw in cash too.

Q I don't suppose that would affect your percentages very much. Do you include in that 30 to 40 percent [689] conventional, the privately insured conventional loans, MGIC loans, that type of thing?

A This has become a part of that, yes, in the last year or so.

Q Could you make an estimate as to how many of your conventional loans are privately insured that way?

A Well, it is a little hard for us to do so, because this

program just became effective six or eight months ago, or made available to us.

Q The MGIC type?

A Yes. I haven't come to a definite percentage of loans that are insured by MGIC.

Q Well, I was just wondering whether you might be able to estimate very roughly, I understand you can't be very specific.

A Oh, it is a part of the program, as I say, that I can't determine right now just what the percentage would be, but it is available and we are using it, I know that.

Q Now I think you said that the local savings and loans make both conventional and FHA-VA loans?

A One does, and one doesn't.

Q Of the savings and loans?

A Yes, we have Fidelity Savings and Lincoln Savings.

THE COURT: He said Lincoln was the only one that made conventional loans, and that is all they make, [690] isn't that right?

THE WITNESS: Yes, that is correct.

Q And the other one makes both conventional and FHA-VA?

A Yes.

Q And you mentioned the mortgage companies make primarily FHA-VA loans?

A Yes.

Q Have you dealt with the Coast Mortgage Company in Spokane?

A They just opened a branch office about one month ago, and we haven't processed a loan through them as yet.

Q You say that Seattle-First is the only commercial bank in Spokane that is doing conventional mortgage loans?

A To my knowledge.

Q To your knowledge. Have you inquired at any other bank as to the availability of that?

A Not specifically recently, but for example I have a personal account with, well in fact a company account is with another bank.

Q Which bank is that?

A The Old National Bank, and they do not offer any conventional financing.

THE COURT: He probably was reluctant to tell where he had his personal account, because he doesn't want them to know he is over here testifying in this case.

Q Have you talked with any of the other banks in Spokane [691] about the availability of conventional mortgage loans?

A As I say, not in the last few months, it is funny with financing, being in this business, you soon learn where the good financing is, and where it isn't, and consequently if there were other banks that were making it, I know I would be aware of it.

Q You say you were told that N B C intends to make seven percent conventional loans available?

A I wasn't told this, he just indicated that if they made seven percent available right now, I would think that would be a favorable rate.

Q Could you compare that with the rate that is available at Seattle-First?

A Seven and a quarter is the prime, and it is more like seven and a half.

Q Do you happen to know if that is approximately the going market rate on conventional loans?

A Yes, generally speaking from what I can tell, seven and a quarter to seven and three-quarters would be the range, in there.

Q And that is the range that Seattle-First is presently dealing in?

A To my knowledge, yes.

MR. HOFFMAN: I have no further questions, your Honor.

[692] MR. HARTMAN: I have no further questions, your Honor, and that is all that the intervenor has today.

THE COURT: All right, Mr. Johnson, you may be excused.

MR. MOEN: Your Honor, the defendant now would like to continue with their case.

THE COURT: Yes.

MR. MOEN: And we would recall Mr. Maxwell Carlson.

THE COURT: All right, Mr. Carlson, would you come back up to the stand please.

## MAXWELL CARLSON,

having been previously duly sworn, was examined and testified further as follows:

### DIRECT EXAMINATION

BY MR. MOEN:

Q Mr. Carlson, did you ever have an agreement or understanding in 1957, or at any other time, with Mr. Sebert Baillargeon, or any other banker in Seattle, Tacoma, or elsewhere, that Seattle banks had an arrangement whereby the Seattle banks would not go into Tacoma, if the Tacoma banks would not come into Seattle?

A No, sir.

[693] Q Did you ever hear of any such arrangement or agreement?

A No, sir.

Q Now, Mr. Carlson, there have been a number of allusions in this case to the branch, the Pacific National Bank of Washington in Spokane. Are you familiar in a general way with that branch?

A In a general way, yes.

Q And do you know when they went into Spokane?

A Oh, about 1965.

Q That was prior to the merger of the National Bank of Washington with Pacific National Bank of Seattle?

A The National Bank of Washington bought the Spokane National Bank, and they had an office in the Davenport Hotel.

Q All right, how much in deposits did that bank have at the time it was acquired by the National Bank of Washington?

A Approximately five million, between the main office and a small branch.

Q And how much do they have now?

A Maybe about twice that much.

Q Are you aware of the wide fluctuations in the deposits?

A Yes, I have been curious about those wide fluctuations, and having inquired, I sort of sensed that they were

able to acquire some Indian funds which they were able [694] to hold up temporarily.

Q And is that a very temporary type of deposit?

A Well, we keep in our bank records of all the banks and their branches where they have public funds, just to have some information as to what kind of growth they are experiencing, and what the competitive situation is, and for a few years they seemed to have fluctuations that went up from five and ten million up to almost twenty-five million, and that made us curious, and we understood that they had some Indian funds.

Q Now what would you say with respect to a bank in Spokane which increased its deposits from five million in 1965, to eleven or twelve million dollars today? Would you consider that a particularly successful venture?

A I would think that would be a very disappointing performance for any large bank going into Spokane.

Q Do you think that branch of Pacific National Bank in Spokane has much impact today in the Spokane banking market?

A I don't think it has any more impact on the Spokane banking market than the Old National coming into Seattle on the Seattle banking market.

Q Do you think that the experience they have had is about what might be expected as a result of this type of entry?

[695] A Well as I say, I would think it would be disappointing, a disappointing experience.

THE COURT: His question was, do you think on account of the way they entered the banking market, do you think that has any bearing on the relative position they are in. Isn't that what your question was, Mr. Moen?

MR. MOEN: Yes, your Honor.

A Well, when it comes to a community like Spokane, or let's say Tacoma, it is one thing to go into a community let's say like Grandview, and we buy a bank, and the Old National is in there, and we slug it out with them.

THE COURT: I want the reporter to be sure and catch that phrase he used, "slug it out."

A (Continuing) To go into Spokane with just one

office and a small branch, I am mindful of the experience we had in Hong Kong. We established a branch in the Central Building in Hong Kong, and it didn't take us long to realize that with one office we weren't going to get very far, so we established four branches, and had five offices in Hong Kong. And in the Western District are the rice merchants, and the produce row, and we hire a banker to run it for us who is related to the rice merchants, and whose roots are deep in that community, and we generate deposits, we generate loans, [696] and it becomes a viable situation. But with just one office in Hong Kong we wouldn't have been very viable, and I don't think that when it comes to communities like Spokane, or let's say Tacoma, that going in and acquiring one office, or going in with one office and maybe one small branch, that the performance can be much other than disappointing. When it comes to the National Bank of Washington and Pacific National, under Goodwin Chase, I can't visualize a banker going into Spokane more aggressively, with no holds barred than Goodwin Chase. They might have a few problems now under the name of Pacific National, and that is not the fault of Pacific National, but when Goodwin Chase went over there, I can't think of a more competitive banker going over there to fish in that pond.

Q I would like for you to consider that acquisition as the type of acquisition which the plaintiff refers to as a toehold acquisition, and I would like to ask you if in your opinion you think that the National Bank of Commerce would fare substantially better were it to go into Spokane under similar circumstances, and in the same manner?

A Well I would always like to think that if the National Bank of Commerce goes in some place, that we will do a little bit better than the average, and we might have [697] done a little bit better than the performance of the National Bank of Washington, but nothing to get excited about.

Q Are you familiar with their large downtown office building?

A Well, I am mindful that when they acquired the Spokane National Bank, the main office was in the Davenport Hotel, and then space was acquired, and property was

acquired, and the building was built, and I am sure that occupancy expense went up many many times, I have never been in it, but I am mindful that for any large bank to go into a place like Spokane, you can't go into a store front, or a hotel.

Q Do you have an opinion as to what kind of deposit base might be necessary to support an investment of that kind?

A Oh, I am always cautious when I am asked what minimum deposits do you need to be in the black. We go over to Dayton, Washington in Southeastern Washington where there are nothing but wheat farmers, wealthy wheat farmers, and acquire five million of deposits and five hundred thousand of loans, and we make a skimpy living. Then we go into the Columbia Basin where our loans exceed our deposits, and we make good money.

Q Now, are deposits gathered in all of your branches available for the Spokane banking market?

[698] A Well, that is one of the advantages of branch banking. I mentioned Dayton, five million in deposits, and five hundred thousand dollars in loans, in Quincy the loans exceed the deposits, the money goes where we can use it to the best advantage, and of course the bread and butter of a good bank is its note pouch, and it is through the note pouch that we build a community, and the note pouch would have first claim on our liquid resources and available deposits.

Q Well, what I was getting at is do you allocate or establish quotas for your different branches, so far as use of your resources is concerned?

A No, we don't allocate quotas. It is the obligation of the head office in a large bank to see to it that funds are available to properly serve the community it is privileged to serve, and the bond account and the liquidity should be of such a nature that even in the difficult times such as the latter part of the decade of the 1960's, that we never get into a position when it comes to our good customers, our loyal friends, that we say "sorry, we are loaned up," and we will take care of at least their normal requirements.

Q Now is it necesary for a large bank such as the National Bank of Commerce, or the Pacific National Bank

of Washington, when entering a large metropolitan [699] market, to have offices consistent with this image, or stature?

A Well, that is what bothers me sometimes, because I wasn't raised with a silver spoon in my mouth, but we all try to portray an image, and as I say, when it comes to a community like Spokane, a bank can't go into Spokane with just a store front, it has to go into quarters that properly reflects its stature and resources, to inspire confidence, and in most cases to go into a community like that, the occupancy expense is rather high initially, until hopefully the branch can grow into it.

Q Now, Mr. Carlson, if this merger would be disapproved and assuming you could legally do so, and go into Spokane in one of the methods suggested by the plaintiff would it be feasible for Commerce to do so?

A I don't think so.

Q And will you tell the Court why?

A Well, I don't think it would be economically feasible, number one. Number two, the value of our correspondent relationships is such that it is more important than going in the way you are suggesting. I learned a long time ago to exercise patience, and sometimes we just bide our time until the proper opportunity comes.

Q Well, I was wondering, do you think the National Bank [700] of Commerce could effectively compete in the Spokane Washington banking market with a single bank ing office?

A No. I tried to explain that when it comes to a place like Spokane or Tacoma, it is no different than Hong Kong. Unless you have a little branch system there, you can't compete.

Q How about attempting to compete with a single banking office out in Opportunity?

A Well, that is like trying to compete from Medical Lake or Deer Park.

Q Then I take it for the record that your answer is no?

A That is right.

Q How about if we had offices at Rockford and Cheney?

A Well, that is kind of a ridiculous question.

THE COURT: He didn't intend it to be a ridiculous

question, Mr. Carlson, and I understand what he wants you to say, and I know what you are going to say, but go ahead.

A (Continuing) I have been in the banking business for over 44 years and if someone is saying that we go into Rockford and Opportunity, and then move those into Spokane, that we are abandoning a community. I remember years ago in the latter part of the decade of the 1930's, we acquired the Ellensburg State Bank, and then a little later on we had an opportunity to acquire the [701] bank at Kittitas, not too far away, and we promptly merged the assets and liabilities into the bank at Ellensburg, and time and time again it was tossed up to us that we had abandoned the community, and we had no intention of establishing a bank and then abandoning a community. That is not our reputation.

Q For the record, could we show that Cheney is a town some 12 to 15 miles west of Spokane, and Rockford is some 35 or 40 miles out of Spokane, south of Spokane.

THE COURT: I didn't understand your question, or his answer to be responsive to it. I thought you asked him how about if you had a branch system over there, I mean a bunch of banks around there—

MR. MOEN: What I am trying to establish is that we don't think it is feasible to service the Spokane banking market with branches in outlying communities.

THE COURT: Well, that is what I thought it was, and I thought you asked him whether it would be feasible to have a bank in Cheney, and a bank in Rockford, and one in Opportunity, and if you had banks in each one of those communities, would you be competitive in the Spokane market.

MR. MOEN: That is the question, and that is what I am driving at.

[702] THE WITNESS: Well, that is no different than Deer Park and Medical Lake, the answer is no, as far as I am concerned.

THE COURT: Now, you were standing up, what did you want to say, Mr. Verveer?

MR. VERVEER: I wanted to ask Mr. Moen to repeat the statement he made before the colloquy between the Court and Mr. Carlson.

MR. MOEN: Just for the purposes of the record, I would like to show the difference from Spokane to Cheney, which I understand is between 12 and 15 miles, and I also wanted the record to show that the distance between Spokane and Rockford, which I believe to be some 35 or 40 miles. I will establish it more accurately in the record when I get a Spokane witness on.

THE COURT: One witness testified that it was 15 miles to Cheney, and I said with the new highway it was only 12, but I could really be wrong about that.

MR. VERVEER: Also, you did not state, did you, that Opportunity was not in the Spokane metropolitan area?

MR. MOEN: I said that Opportunity is some six miles east of the Spokane City Limits, and I think about eight miles if you measure from downtown Spokane.

MR. VERVEER: But within the Spokane metropolitan area.

[703] MR. MOEN: It is within the area we stipulated to as being the Spokane banking market.

THE COURT: All right, go ahead.

Q (By Mr. Moen) Do you think you could justify a full line of commercial bank services to service the Spokane banking market, and expect to operate at a profit with a single banking office in Spokane?

A Well, I don't think you could afford the expertise of a specialist that would be required, or the occupancy expense, the economics wouldn't justify it.

Q How important would it be that you would have no legal way of establishing new branches?

A You mean if you had one office—

THE COURT: Go a little more into detail in your questioning, counsel. What he wants to know, Mr. Carlson, as I understand it, is suppose you went in there by sponsoring a national bank, and acquired it, and you had one office. That is what you want to know, isn't it?

MR. MOEN: Yes.

THE COURT: All right, now ask the rest of your question.

Q (By Mr. Moen) Well, making that assumption, that you go in and establish one office in downtown Spokane. How important would it be to your decision that that

one office bank could not branch, under the laws of Washington as they are now?

[704] A Unless I could have a branch system in Spokane, I wouldn't want to go into Spokane, or Tacoma.

Q Do you think an effort to establish a bank in this manner would be the most economic use of the bank's resources?

A Oh, we have all kinds of options for the use of our resources.

THE COURT: You are pointing right to that specific thing, are you not, sponsoring a national bank, going in on a toehold, as they call it.

MR. MOEN: Yes.

THE COURT: Do you think that would be an economic way of using your resources, to sponsor a bank like that?

THE WITNESS: Not when it comes to making money.

Q (By Mr. Moen) Do you think that entry into Tacoma or Everett or some other area might be a better use of such resources?

A Yes, provided we could get into those communities under the proper circumstances.

Q Has Commerce recently tried to enter Spokane by means other than this merger?

A Not to my knowledge.

Q Did you recently have some interest in acquiring the Farmers and Merchants Bank at Rockford?

[705] A We are always interested in opportunities to expand in the State of Washington de novo through the acquisition of an existing institution. It doesn't mean that we want to buy all of them, because I can think of some that are for sale that we have no interest in, and as far as this bank is concerned, with its three offices, I'm sure that many large banks would be willing to listen to someone who might represent that bank as being for sale.

Q Well, were your interests in acquiring Farmers and Merchants Bank at Rockford intended as a means of entry into Spokane?

A No.

Q Have you ever considered entry into Spokane by purchasing a branch of an existing bank, as distinguished from buying the bank?

A Well, Justice would probably get after us, saying that we are trying to divide up the market.

Q Well, in your opinion is this a practical suggestion?

A No.

Q Did you ever hear of any branch in the State of Washington being sold separate and apart?

A No.

Q Or did you ever hear of a branch in Washington being traded for another branch?

[706] A No, I can't visualize anyone volunteering or offering to do it.

Q These suggestions are being made by plaintiff, and I am just trying to get it into the record that we don't consider them as practical.

THE COURT: All right.

Q (By Mr. Moen) Do you consider banking in Washington to be competitive?

A Yes, I mentioned to my associates that in this day and age it is competition unlimited.

Q Do you consider Spokane to be a competitive market?

A I think it is a competitive market, yes.

Q Do you consider Mutual Savings bank and savings and loan associations to be a part of the competition?

A They are all part of competition, including the credit unions, but there is a place for all of these institutions, as far as I am concerned.

Q Do these other so-called non-commercial bank institutions compete with you for deposits?

A Yes, they compete with us for deposits, and they are constantly striving for legislation that will enable them to be more competitive in the retail market.

Q And do they also compete with you for loans?

A In certain aspects they compete with us for loans, they are getting in the mortgage market, and they are [707] getting into the personal loan market, and when it comes to the Mutuals, I guess they are getting into the trust business.

Q And do they also compete with you for branch bank sites?

A Well, when it comes to the Mutuals, they are favored over the commercial banks because they are not restricted the way we are when it comes to establishing new branches, they have greater freedom than we have.

Q Do you consider the National Bank of Commerce to be a strong competitor?

A We would like to think that we are competitive.

Q And when entering a new market, do you use your best efforts to compete?

A Well, why go into the market unless you are ready to compete.

Q I take it your answer is yes?

A Yes.

Q And would you do so if this merger were consummated?

A We would just love to.

THE COURT: Sometimes, Mr. Carlson, the answer is so obvious to you, and probably obvious to me, and you know it is obvious to me, but he wants to put it in this record. That is why he is asking those questions.

Isn't that right, Mr. Moen?

[708] MR. MOEN: Yes, your Honor.

THE COURT: It is just to make the record, that is all.

MR. MOEN: Even though you think it is ridiculous.

THE COURT: All right, go ahead.

Q (By Mr. Moen) Do you think it is reasonably probable that the Washington Trust Bank will expand its banking offices to areas outside Spokane County to any substantial extent?

A I see no evidence so far.

Q Would the acquisition of another bank or two by Washington Trust Bank outside Spokane County have any significant impact or effect on competition in any significant banking market?

A I don't think so.

MR. MOEN: Would you please hand this to the witness.

Q (By Mr. Moen) Will you look at Plaintiff's Ex-

hibit A-1, and I will ask you if the figures as shown on that exhibit for Seattle-First National Bank, and for the National Bank of Commerce accurately reflect the share of those banks of the total deposits in the State of Washington?

A Well, I notice the heading says Change in Total Deposits [709] of the Ten Largest Commercial Banking Organizations in the State of Washington. That the deposits of the Seattle-First National Bank, and the National Bank of Commerce include their deposits outside the State of Washington, for the National Bank of Commerce specifically in London and in Hong Kong, and the Seattle-First through their Nassau and Zurich offices, and so I think this schedule would be more realistic if it confined itself to the deposits of the banks in the State of Washington, because between ourselves and the Seattle-First, we have Euro dollars and other foreign currencies which can be purchased. In London, for instance, we now have possibly 250 or 300 million, we could make it 400 million, 500 million, just go out and buy them, and so when it comes to a share of the market in the State of Washington, if this schedule is to be realistic, it should exclude the, oh, let's say 400 million of Euro dollars and Euro currency in foreign funds that have been purchased by the Seattle-First and the National Bank of Commerce outside the State of Washington.

Q All right. Now would you look at Exhibits A-2, A-3, and A-4, and tell me whether those figures include foreign funds for National Bank of Commerce and Seattle-First National Bank?

A Well, I would assume that these schedules support what [710] is on the first page here, and if that is true, then they don't reflect deposits in the State of Washington exclusively, they reflect deposits abroad, that doesn't measure our deposits in the State of Washington.

Q Now, turn back to Exhibit 1—

MR. TORRE: May I voir dire the witness on that particular point, your Honor?

THE COURT: Well, I will let you cross-examine him. Voir dire means to ask him questions concerning his qualification to speak, just as we qualify jurors to sit. So I will let you ask him on cross.

Q (By Mr. Moen) Now, returning your attention to Exhibit A-1 again, I will ask you, how would the elimination of those foreign funds affect the trend shown on that exhibit?

A Well, because those foreign funds in London and elsewhere are included in those figures as though they were in the State of Washington and it would appear that our share of what is in the State of Washington would be increased, but you take those foreign funds out, and I think our share, the share of the Seattle-First and the National Bank of Commerce, instead of showing an ascending trend, frankly might show either a flat or a descending trend. I haven't checked that out, but I know with the foreign funds in here, that it doesn't properly reflect the [711] share of both the Seattle-First and the National Bank of Commerce in the State of Washington.

Q Now, have you been personally present in the courtroom throughout most of this trial?

A Yes, sir.

Q And did you hear the testimony of Dr. Smith and Mr. MacMurray with respect to the so-called wings theory?

A Yes, sir.

Q Do you agree with their conclusions?

A I don't agree.

Q Do you think that the wings theory has any application in the banking industry?

A Oh, I have got a Master's degree in business administration from Dartmouth College, I wasn't smart enough to get a Phi Beta Kappa key, I got Cum Laude, and I wasn't smart enough, bright enough, to get a Doctor's degree so I didn't understand Mr. Smith. For instance, to me it has been inevitable that Western Bancorporation, through the National Bank of Washington, would some day be in Seattle. How they were going to come in, through the Pacific National, Seattle-Trust or some day when old Josh passes away at Peoples, something might happen there,—

THE COURT: That may never happen, he may never pass away.

[712] A (Continuing) But I don't think that has

bothered any of us, it certainly hasn't bothered me as president of the National Bank of Commerce, so let them come and we will slug it out. Unexpectedly, the Old National comes over into Seattle, I can't see that that has done very much, and I think their entrance into Seattle is going to be about as disappointing, their growth there, as National Bank of Washington's entrance into Spokane. I don't have enough education to understand some of these things.

THE COURT: Just for the record, when he said "old Josh", of course I am acquainted with what he meant. For the record, we were talking about Joshua Green, who is, what, 103 years old now?

THE WITNESS: Yes, your Honor, he is 103 years old.

THE COURT: They keep writing about how active he is downtown, and has been a long time prominent figure in the Seattle banking industry, is that not true?

THE WITNESS: Yes, that is correct, your Honor.

Q (By Mr. Moen) And, for the record, would you again state his correct name?

A Joshua Green.

Q And would you also identify him, tell us with what bank he is connected?

[713] A Well, he is,—I don't know what his title is, it doesn't make any difference, but he is the boss, his family has about sixty per cent of the stock.

Q Of what bank?

A Of the Peoples Bank, the Peoples National Bank of Washington.

Q Do you think the bankers in Spokane were influenced prior to your announced merger with Washington Trust Bank by any threat of National Bank of Commerce entering the Spokane market?

A Well, it is just human nature when you are threatened with additional competition, to look around and see if there is something that needs to be buttoned up, and I could visualize temporarily that some banks might be a little more generous, for fear that they might lose some business.

Q Yes, but my question was, do you think that was

the situation prior to your announced merger with Washington Trust Bank?

A No.

Q And if the merger is disapproved, do you think the banks will be influenced by any threat of Commerce entering the market at some later date?

A They will go right back to where they were before, whatever that was.

[714] Q And do you think that has any effect on the interest rates or banking practices or banking policies in the Spokane market?

THE COURT: What has any effect? I don't think he understands what you mean.

MR. MOEN: That the fact that the National Bank of Commerce might some day enter the market.

THE COURT: In some other way, you are talking about?

MR. MOEN: In some way other than this merger.

A Well, I can visualize following that announcement that the National Bank of Commerce was going to merge with the Washington Trust, that the other banks take a look and maybe a little more generous with some of their customers, some of their customers that they think they might lose, and if the National Bank of Commerce doesn't come into Spokane they will go right back to where they were before.

MR. MOEN: Very good. You may cross-examine.

THE COURT: Well, let's see, we have been going for about an hour, a little more, and Mr. Carlson has been on the stand for quite a little while. I think we should perhaps take a short recess, because being a witness is a hard job, just like being a Judge. All right, we will take a short recess.

[715] (Recess.)

THE COURT: Before you start your cross-examination, Counsel, I wanted to ask Mr. Carlson a question to see if I have the right impression.

Mr. Carlson, I understood from one of your answers to one of the questions as far as new bank buildings are concerned, that you probably wouldn't have to have a real elaborate Board room?

THE WITNESS: I would try to if I wasn't overruled by all of my associates.

THE COURT: All right, that was the impression I gathered, functional but not elaborate, is that the idea?

THE WITNESS: That is correct.

THE COURT: All right, go ahead.

CROSS-EXAMINATION

BY MR. VERVEER:

Q Mr. Carlson, along the lines that the Court was just mentioning, I believe you just testified that you had to have a building when you went into a community, a building consistent with the image of the bank, and I take it from what you have just said, and also comparing the headquarters building in Seattle with the headquarters of Seattle-First, that you didn't mean [716] anything overly elaborate, is that correct?

A No, but we would probably end up with more than I would like, because when I was president I tried to tell the operating department that in some areas we need A construction, in some areas we need B construction, and in some areas like Quincy, we could get by with C construction, because the dirty wheat farmers would come in and they wouldn't feel particularly comfortable in elaborate quarters. But they were always chiseling on me, that if it was C construction it would end up B minus, but if it was supposed to be B, it was either B plus or A minus, and so in management these days it is kind of hard to control your associates. My father always used to say, "Do you need it, and can you afford it?" People don't ask themselves those questions any more.

THE COURT: Incidentally, Mr. Carlson, you don't drive over here each days in a Rolls Royce, do you?

THE WITNESS: No, as a matter of fact except for this morning I have taken the bus, round trip three times at $2.85 a round trip.

THE COURT: All right, go ahead.

Q (By Mr. Verveer) Mr. Carlson, on Tuesday was it your testimony that Marine Bancorporation was count-

ing on [717] Mr. Stanton to take over an important management position?

A No, not Marine Bancorporation, as president of the National Bank of Commerce, when I was president of the National Bank of Commerce, and I think my Memos read as president of the National Bank of Commerce.

Q No, sir, I am sorry I didn't make myself clear. I think you testified that should this merger be concluded, it is your hope that Mr. Stanton will take over an important management position, perhaps the one that you are occupying yourself at the moment?

A No, he will take over an important management position in the National Bank of Commerce under Mr. Faragher.

Q Now, does the National Bank of Commerce have any problem obtaining good management?

A We try to promote from within as best we can, but with the growth that we have had over the years, and the specialization in different areas, it has been necessary to bring people in international banking, in the trust department, data processing, and then as far as the head office senior management is concerned, I think the record will show that I brought in Mr. Buck some years ago as senior vice-president, and then I brought in Mr. Faragher to succeed me, and in negotiating for the Washington Trust Bank it appealed [718] to me for a number of reasons, including two in particular, that not only would it enable us to have access to Spokane and be more competitive with the other banks but it was not a bank that was deficient in management, it could take care of Spokane, and help us with our management, and I expected that Mr. Stanton by this time would already be in Seattle as Mr. Faragher's administrative assistant, if it hadn't been for this case.

Q But National Bank of Commerce is, or was able to obtain good management. For example, you were able to get Mr. Faragher's service without buying the Bank of California here in Washington?

A Well, as I say, you try to promote from within, and then when it comes to the additional help that you

need, you try to get it wherever you can get it, preferably with people whose roots are deep in this community. For instance, when it comes to Bob Buck, Faragher and Stanton, their roots are deep in the State of Washington, all three of them.

Q Do you regard Mr. Faragher, Mr. Buck and also Mr. Andrew Price as being the top management of the National Bank of Commerce?

A Oh, the top management of the National Bank of Commerce, as far as I am concerned, is the president and the chief executive. He has senior associates at the [719] senior vice-president's level, and the vice-president's level, but as far as I am concerned, the chief executive represents the top management, and sometimes the chief executive doesn't agree with his associates, there are many times when I have got together with my senior associates, so-called, and they have made recommendations, sometimes I disagreed, and sometimes I walked off and let it go by default, but the chief executive is responsible.

Q And the chief executive of the National Bank of Commerce at the moment is whom?

A Mr. Faragher.

Q Where does Mr. Andrew Price fit in with respect to Mr. Faragher in the National Bank of Commerce?

A He is the chairman of the Board, and provides the leadership for the Board of Directors, and because of his broad banking experience, is helpful to Mr. Faragher like any other senior officer of the bank. He takes on whatever assignments Mr. Faragher cares to give him.

Q And Mr. Buck, what are his responsibilities?

A Mr. Buck's responsibilities are primarily in respect with public relations, business development. We took him away from the Small Business Administration, and at first he was vice-president in charge of term loans and small business, but his responsibilities are [720] primarily in public relations and business development.

Q I believe on Tuesday you testified that every banking organization needs some eager beavers, and that National Bank of Commerce had its share. Would you

classify Mr. Price and Mr. Buck with terminology like that?

A They are all ambitious, and there are times when I regard them as eager beavers. That is the problem that the chief executive has, of never being an eager beaver by himself, at least not showing it, so that he has both feet on the ground and can look at the pros and cons realistically, with all of the problems that the bank is faced with. Sometimes even senior associates go off a little half cocked, and that is the chief executive's job to control.

Q You don't have any doubts about the capabilities of Mr. Faragher, or Mr. Price, or Mr. Buck, do you?

A No, if I did they wouldn't occupy the position they have.

Q If Mr. Faragher were appointed Secretary of the Treasury tomorrow, who would take over the National Bank of Commerce?

MR. MOEN: Oh, I will object to the question. How could he possibly know? That is a question for the Board of Directors.

THE COURT: Well, that is right, and I think [721] it would be relating something that he doesn't have to tell. I don't think he should be obliged to disclose that, and I will tell you why. Its probative value is so minimal that even if it does have some probative value it is outweighed by the requirement that he disclose something that might be extremely harmful to the organization. I don't think you want to put your finger on somebody's shoulder and cause a lot of people to be disappointed in the organization, if you know what I mean. So, Mr. Carlson, you can pass on that one.

Q (By Mr. Verveer) Mr. Carlson, about how old is Mr. Faragher?

A I would say he is between 60 and 61.

Q And about how old is Mr. Buck?

A Oh, I imagine about 55.

Q And Mr. Price?

A About 50.

Q And I believe your testimony Tuesday was that the compulsory retirement age for officers in the National Bank of Commerce was 65?

A Yes, that is the normal retirement date, unless the Directors ask somebody to stay on, but the normal retirement is 65. The Directors can provide for exceptions, but those are rare and few in this day and age.

Q So assuming that he enjoys good health, and is not [722] invited to become Secretary of the Treasury, we could reasonably hope and anticipate that Mr. Price would be with the bank for the next fifteen years, let us say?

A I would like to think that Mr. Price will be with the bank until age 65, and I would like to think that Mr. Faragher will be with the bank until age 65, Lord knows we need both of them.

Q On Tuesday you gave some testimony with respect to the Columbia Center National Bank. Did you have the day to day responsibility for the National Bank of Commerce' activities with respect to the Columbia Center National Bank?

A Well, the chief executive is always responsible for what happens in the bank, and I take full responsibility for what happened in connection with the Columbia Center Bank, and if you wish, I will tell you the whole story of why we got involved.

Q No, sir. What I was asking, and perhaps not very adeptly, was who had the operational responsibility for the Columbia Center National Bank, and the assistance that you rendered to it?

A As the bank became larger and I got closer to retirement, it was necessary that I delegate more to others, for two reasons: one, because I wasn't broad enough to carry the load myself, and, two, a new generation is [723] coming along, and they have got to learn for themselves. So when it came to the Columbia Center Bank, what is involved there primarily, as far as I am concerned, is preserving our relationship with Allied Stores. It was important enough that I turned that responsibility over to Mr. Price and Mr. Buck to carry the ball, in the day to day activities.

Q And so there were others at National Bank of Commerce who were better informed as to Columbia Center National Bank than you are?

A As to the day to day activities they would be better informed. As to overall policies against which to operate, I identified for them, and I am frank to admit that I wasn't very helpful, and possibly I made it more difficult for them, which may account for some of the confusion.

Q I believe on Tuesday you testified that you wanted to place stock in friendly hands for the sake of maintaining correspondent relationship with the new bank you assisted, is that correct?

A Well, if you are called upon to be helpful, and part of the job is, let's say, to accommodate the Comptroller of the Currency, to see that there was a strong president, that there were capable directors, and that the stock was in legitimate hands, anyone in our position would [724] try to put it in congenial hands, rather than to turn it into hands of people unfriendly to us or close to another competitor.

Q And you said that this was related to accommodating the Comptroller of the Currency, to some extent?

A No, in connection with this one we tried to accommodate Allied Stores, and we tried to accommodate the Comptroller of the Currency, and maybe at a proper time I can get all of this in sequence. The Comptroller, as I understand it, is interested in how capable is the man to run the bank, what kind of directors are the directors going to be, because we have seen too many cases where directors are not very competent, and then I think that the Comptroller's office, any supervisor's office, is interested in knowing who owns the bank.

Q Are you quite confident, Mr. Carlson, that Mr. Price and Mr. Buck shared your view of the situation with respect to Columbia National Bank?

A Well, you sense from the record that there was occasional indecision, and maybe it was because they found it difficult to adhere to the policies that would be involved on my part.

Q Could I ask you, Mr. Carlson, to turn to what is labeled as Government's K-36.

A Do you want me to read it?

[725] Q Well, do you recognize this to be a document

that Mr. Buck sent to Mr. Loney for purposes of being attached to the application for a charter sent to the Comptroller of the Currency?

A I don't see Mr. Buck's signature but I see his initials, and I see the secretary's initials, and I am satisfied it is appropriate.

Q Mr. Carlson, the first sentence in the third paragraph of that letter says, "It is true, nevertheless, that our bank has inspired submission of the application, and it is hopeful at an appropriate future time it will be possible to acquire the bank for incorporation within its branch system."

Then the fourth paragraph, the last sentence says "The majority stock would be in hands friendly to the National Bank of Commerce, in order to insure as much as possible its future as a branch of that bank, yet avoid certain legal problems which could arise if it were not to agree or contract with respect to its acquisition."

I have given some thought to this letter over the past several months, and it seems to me that the word "not" in the bottom line, we could all agree, is a grammatical error.

MR. JOHNSTON: Yes, I think that is right.

[726] MR. MOEN: We will agree that the word "not" may be deleted.

THE COURT: All right.

A Well, I see nothing that bothers me here. I can't visualize any bank, corresponding bank, being helpful in establishing another bank, putting themselves in a position where they are going out of their way to turn it over to somebody else.

Q But this isn't entirely consistent, is it, with the statement that stock was placed in friendly hands to insure the correspondent relationship would be maintained. It appears that more than that is involved.

A I don't think so, I think to me friendly means congenial.

Q Could I ask you, Mr. Carlson, to turn to Government Exhibit J-37. Could I ask you to look over the entry dictated by Andrew Price on June 7, 1967.

A Yes, I have read it.

Q The last sentence of the second paragraph says, "I indicated that in helping these men with their organizational plans, we naturally hoped that the bank would be a correspondent of ours, and that it might one day be part of N B of C."

Now what I am more interested in is the third paragraph. To what does that appear to relate?

A Well, Mr. Price was—

[727] THE COURT: What number was that again?

MR. VERVEER: J-37, your Honor.

A Mr. Price was faced with a difficult problem of placing the stock in congenial hands, and I would expect that in visiting with people who are interested in buying the stock, they would wonder, well, what can we expect in connection with this investment over a period of time.

Q But Mr. Price's explanation to Mr. Malone appears to be directed only to the value of the investment with respect to sale of the Columbia Center National Bank to some other bank, isn't that correct?

A Well, whether it sold to us or to somebody else, what is in that paragraph would apply, and he is talking about the market, I think.

Q Could I ask you to look at Government Exhibit J-20. I have reference particularly to the memorandum dictated by Mr. Price on August 15, 1968, which is found at the bottom of the page.

A Yes.

Q That isn't consistent with the idea that the stock is put in friendly hands solely for the purpose of maintaining correspondent relationship, is it?

A I think it is. Most of these new banks that are being established appear to lose their independence somewhere [728] along the line, and in trying to accommodate Allied Stores, in trying to establish a correspondent relationship, and having the responsibility to Allied Stores to provide them with a bank, we had to place the stock, and if someday the bank were to be sold, it is only natural that the stock be placed in congenial hands, because as far as this one is concerned, as far as I am concerned it is friendly to the National

Bank of Commerce. We got involved in this to accommodate Allied Stores, and to establish a correspondent relationship, and if someday this bank, like any other bank, were to be sold, we like to think that it would come to us.

Q Would you identify Mr. Carrington for us, please?

A He is an old time director of the National Bank of Commerce, a very wealthy man, I would say he is about 90 years of age at the present time.

Q Mr. Carlson, have you had an opportunity to read the deposition which Mr. Price made in connection with this case on August 17, 1972?

A I don't remember it.

Q On page 71, line 21 of the deposition, I will have to read this to you.

THE COURT: I will give you this one, and perhaps you can follow it as he reads it, unless you [729] have a copy there.

MR. MOEN: No, I don't.

THE COURT: All right, you can have this one.

Now, when you point out a sentence like that, I generally try to read the page preceding it and the page following it, so that I can get the context of it, so if there is a copy available I would sure like it, because then I have a better picture. Sometimes just a single sentence doesn't tell me much.

MR. VERVEER: Your Honor, we will be happy, if you are willing to take the time, we would be happy to let you read our copy.

THE COURT: I am willing to take the time. Let me read the page before, and the page after.

MR. JOHNSTON: We could obtain one, your Honor, in say ten minutes.

THE COURT: No, I could just read this over, and give it right back to him. It won't take me any ten minutes to read it.

MR. VERVEER: Your Honor, if I could suggest, there might be a couple of other passages in this deposition that we are going to want to cover.

THE COURT: Well, I will just read this one. Let's take just one at a time.

All right, I have read it so you can hand it [730] back to him.

Q (By Mr. Verveer) At line 21 the question appears:

"Q Weren't you seeking to establish a branch there indirectly, Mr. Price?

"A We had hoped to have a branch there eventually, I had mentioned that before.

"Q And you were sponsoring the bank there to establish a branch?

"A We were encouraging the formation of a unit bank which we hoped that we eventually might be able to acquire.

"Q And you were doing everything within legal limits to insure that you could acquire that bank?

"A I think so."

Now, Mr. Carlson,—

A I don't find any problem in connection with this one.

THE COURT: Well, I will assume here that they went in there with the idea of forming a unit bank, and they were doing whatever they thought was necessary to eventually acquire it. I think that is probably a fair statement. If they weren't, there would be something wrong with their heads, because they had Allied Stores over there, and they wanted an N B of C bank over there so that Allied Stores could be serviced, so to speak, so that even though Mr. Carlson would not [731] agree, I would still say that that is what they had in mind.

THE WITNESS: May I comment briefly?

THE COURT: Surely.

THE WITNESS: We got involved in this to accommodate, one, Allied Stores. If it hadn't been for Allied Stores, we never would have been involved in it.

Number two, to obtain a correspondent relationship, and then naturally in connection with it, if someday it were going to be sold along the line, we would like to think that as a by-product we would have an opportunity to buy it.

THE COURT: All right, go ahead.

MR. VERVEER: Your Honor, I would just like the record at this point to show that the government also believes passages on the Price deposition, page 53, lines 3 through 18—

THE COURT: Does this go to the intent of the bank at the time of the formation?

MR. VERVEER: Yes, your Honor, I would just like this in the record. Page 55, line 21 through line 5 on page 56. And page 101, line 3 through line 10, will support the Court's finding.

MR. MOEN: I would like to inquire if the entire Price deposition hasn't been admitted into [732] evidence.

MR. VERVEER: It has, yes.

THE COURT: Yes.

Well, my feeling is this, that I am satisfied as to what the reason was, although I feel this way about it, if this will relieve anyone's mind. So far as the activities of the N B of C are concerned over there in doing what they were doing, it may relate to their ability or desire, or something of that sort, in the Spokane area, but I don't conclude from his deposition, or from what I find to be the facts over there, as far as the establishment of the bank, and subsequent acquisition of it, if they had that in mind, which obviously they did if it was going to be bought, or more definite than that, that they were contending that they eventually could buy it, that there is anything civilly wrong with that approach. I just don't find anything wrong with it, the only thing is, they had the capability, and they had done it, if that is what you are trying to prove.

MR. VERVEER: That is exactly it, your Honor.

THE COURT: Well, I have no doubt about that, I had no doubt about that right from the beginning of the case. I think they can go in and they can help organize one, they can loan money and all the rest [733] of it, and they could probably do it in Spokane. I will agree that they could do that. Now whether they want to is something else again. All right, go ahead.

Q (By Mr. Verveer) Just to finish this off, and I don't mean this facetiously at all, Mr. Carlson, if you

were going to sponsor a bank with the intent later to acquire it, is there any really anything else that you could do beyond what was done at Columbia Center?

THE COURT: They could threaten to call the loans on the people who own the stock. Do you understand what I mean? Is that what you are talking about?

MR. VERVEER: That hadn't occurred to me, your Honor, but I suppose that is a possibility.

THE COURT: Well, I think this is just of no moment to me, Counsel. I just don't think it is of any moment, regardless of how he would answer it.

MR. VERVEER: We would be happy to move on, your Honor.

THE COURT: All right, let's go to the next matter.

Q (By Mr. Verveer) Unfortunately, in a related subject, could I ask you to look very quickly at Government Exhibit K-64. This is a memorandum from Mr. Price to Mr. Buck, and I would ask you to look particularly at [734] the last paragraph.

A Yes.

Q Does that indicate that at least Mr. Price might have had some continuing interest in similar activities?

A Well, Mr. Price, with Mr. Buck, was carrying the ball in connection with this one.

THE COURT: Is that the one where Loney says we have to have a new president, and we want your help to find one?

MR. VERVEER: Yes, your Honor, and specifically the last paragraph where Mr. Price suggests to Mr. Buck that a man ought to be assigned as part of his regular duties with the National Bank of Commerce to supervise sponsored banks.

A We had no intention of supervising this one. I think I may have mentioned that it was only as a last resort that I permitted them to give some consideration to one of our own people, and then when it boiled down to one of our own people, then he had to sever himself completely from the National Bank of Commerce, but then I also understood that not only was a capable president required by the Comptroller's office, but it was important that on the Board there be somebody knowledge-

able with regard to credits, and through Mr. Maguire we tried to make that available.

[735] Q But this document might go back to the point that you made at the beginning of our discussion, which is, sometimes it is very difficult for the chief executive officer to control the subordinates—

THE COURT: Well, no, I can't go for that. I can't go for that situation, that is your testimony. In the presence of one of your witnesses who is now no longer—well, I would call him back and ask him this question: Is it common practice for people who have organized a bank to ask the supervisor of banking if he will help, or some other bank, or a bank who has been helpful in getting it organized, if they will help in finding a president of that bank who is a capable fellow and can do the job in running it after you get it organized. Now, that question would be to Mr. MacMurray, and I know what his answer would be to that question. That is a common thing, isn't that true? Would you stipulate to that?

MR. VERVEER: We would stipulate to that, your Honor.

THE COURT: To my testimony on it.

MR. VERVEER: Yes.

THE COURT: All right, now go to the next matter.

Q (By Mr. Verveer) But this document does suggest, does [736] suggest, does it not, that perhaps Mr. Price had in mind that there would be additional similar ventures, is that correct?

A Now what is the number of this one again?

Q That is K-64, sir.

A Well, as far as I am concerned Mr. Price is just talking about the Columbia Center National Bank, and nothing else.

Q I think, Mr. Carlson, it has reference to "banks," plural, not any particular bank, just banks with which the National Bank of Commerce might become involved.

THE COURT: Well, that is for me to determine. All right, go to the next question. It is a little bit difficult to determine, but in any event, he meant that they should have somebody to look after the situation

so they can take care of their representations to the Comptroller of the Currency that there would be a good operating facility, and help Loney out. That is what they say. All right, go ahead.

[737] Q (By Mr. Verveer) Mr. Carlson, could I ask you to look at Government's Exhibit I-4E please? I call your attention particularly to the paragraph dictated by Mr. Price on April 25, 1969.

A April 25th?

Q April 25th, sir, yes. Do you recall the conversation that is being related here?

A No, but I can visualize giving that reply, "He felt that unless there was some emergency, he would prefer a delay to doing anything." That was my way of saying no.

Q I thought as much, and I think Mr. Price did too. But it appears that he did have a conversation with you about perhaps starting a unit bank in Pullman?

A Oh, sure, but they would leave me unhappy sometimes, because I wouldn't agree with them.

Q You do hope that Mr. Price will be with the National Bank of Commerce for the next 15 years, at least?

A Well, he is a good officer.

THE COURT: I don't get the point to that question, as far as it relates to this. You mean just because Mr. Carlson told him no, that he might quit, or something like that?

MR. VERVEER: No, your Honor, I thought this might indicate some inclination on Mr. Price's—

THE COURT: Of course the word "quit" is a [738] poor word in the banking business. "Resigned" is the better word.

MR. VERVEER: No, I just meant that Mr. Price will probably have a very important part in the National Bank of Commerce for a long time to come.

THE COURT: What you are trying to infer is that he will be happy when Carlson is out of the picture so he can go ahead with this, is that the idea, is that what you want me to infer?

MR. VERVEER: No, your Honor, not at all.

THE COURT: Well, what other inference could I

take from what you said, counsel, you say that Mr. Price is going to be on for 15 more years, and that Mr. Carlson is trying to get out, so Price then if he had a free hand would go ahead and go into Pullman, because Carlson is gone and can't say no?

MR. VERVEER: My denial was directed to the idea that we wished Mr. Carlson to retire from the bank this year.

THE COURT: Oh, I know that, but your inference was that Mr. Price would do it if Carlson wasn't there, isn't that the idea?

MR. VERVEER: That would be a possibility, your Honor.

THE WITNESS: Your Honor, I provided for a [739] successor, Mr. Faragher is now the chief executive, and I don't think that Mr. Price will succeed him as the chief executive.

THE COURT: Well, I don't want to get into that, I am just saying that he inferred to me that if you were not there and couldn't say no, that Price would go into Pullman. I mean that was his inference, and I just wanted to pin him down to the fact that is what he wanted me to think, and I think he did. All right, go ahead. You don't deal with these fellows as much as I do.

Q (By Mr. Verveer) Mr. Carlson, have you as a banker stated your preference for entry into the new banking market on a large scale, rather than de novo, or what we would call foothold acquisition?

A Well, I just play my phonograph record. I told my associate and anyone who wanted to listen, that there were three ways for us to go in the National Bank of Commerce, one is to do a better job with what we have, occasionally establish an office de novo where we could, primarily in King County, and then occasionally have an opportunity to acquire an existing institution, and that doesn't mean that we necessarily want to buy everything that might be laying around loose.

THE COURT: Do you have considerably more? [740] If you do, I am going to take a brief recess again.

MR. VERVEER: I think we have a bit more, your Honor.

THE COURT: All right, let's take a short recess. Frankly I don't like to have people be on the witness stand too long, it is a hard job, and an emotional thing, so we will take a brief recess.

(Recess)

THE COURT: I came out this way after recess, counsel, because I am sorry to say that robe I have been wearing has the sleeve ripped out so I can't get it on. I am not adverse to sitting here in this manner in any event. All right, go ahead.

Q (By Mr. Verveer) Mr. Carlson, in the past have you expressed an interest for large scale entry into new markets of the National Bank of Commerce, as opposed to a foothold, or de novo acquisition, foothold acquisitions or de novo entry?

A Well, in trying to get into a market we would like to get into it in a meaningful way. I happen to be president now of Marine Bancorporation, which was established in 1927. At that time the Marine Bancorporation acquired well established banks in Seattle, Olympia, Aberdeen, Mount Vernon, and other places, and I think the experience has been over the years that there [741] is no use buying peanuts. If you can't buy something worthwhile, and if they have got good correspondent relationships, then you measure the value of those correspondent relationships, and as I have mentioned before, in connection with any correspondent relationship, you would like to think that there might come a day when you might be considered as a successor, and we are very patient in our organization, and if we have to wait, it is like the right girl in marriage, we might wait a long time, I am not so sure that we wait longer for a bank than for a wife, but we are inclined to wait.

Q Could I ask you to look very quickly at Government's Exhibit F-23 please? This was a memorandum dictated by you on November 15, 1968, and I invite your attention particularly to the fifth paragraph and the discussion right at the beginning of that paragraph.

A Yes.

Q Is that an accurate reflection of your feelings, just pretty much, for example, of just what you told us?

A It was an example of my feeling in 1968, and the way it is now.

Q Did Marine Bancorporation attempt to acquire Far West Mortgage Company in Spokane?

A Yes.

Q Was the acquisition approved by the regulatory officials?

[742] A No.

Q Does the Marine subsidiary have a mortgage office in Spokane at this time?

A Coast Mortgage, a Marine subsidiary, has recently established an office in Spokane.

Q How long after the denial of the Far West application was the Coast office established?

A Well, when the Federal Reserve denied the Far West application, because of the Federal Reserve's attitude that we can acquire something outside the State of Washington, that they prefer that we expand de novo in the State of Washington, and that is the only way to go. So having been denied Far West, we established a branch of Coast Mortgage in Spokane.

Q And this was about four months or six months afterwards?

A Approximately.

Q You have been interested in acquiring the Washington Trust Bank for a long period of time, haven't you?

A Historically, our organization has been interested in getting into Spokane for a long time.

Q Would it be fair to say that that interest goes back at least to 1953?

A Oh, it goes back prior to that.

Q I am sorry, Mr. Carlson, I missed something just a moment ago. Did you say that you were interested in going into [743] Spokane, or interested in acquiring Washington Trust Bank?

THE COURT: He said they were interested in going into Spokane for a long time.

THE WITNESS: That is right.

Q (By Mr. Verveer) Do you regard Spokane as an attractive community from the standpoint of the banking business?

A I look upon Spokane as a good solid community.

Q You own some stock in the Washington Trust, don't you?

A Yes, sir.

MR. VERVEER: I would like now to turn to the deposition which Mr. Carlson gave on August 16, 1972. Page 19, line 19, to 20, line 5.

THE COURT: Do you want a copy of your deposition so you can read as it comes along? And did you say line 19, Mr. Verveer?

MR. VERVEER: Yes, your Honor.

THE COURT: Through line 25 on the next page, is that the idea?

MR. VERVEER: Through line 5, your Honor.

THE COURT: All right, I have read that.

Q (By Mr. Verveer) Mr. Carlson,—

THE COURT: Just hand him this deposition.

THE WITNESS: What am I supposed to read now?

THE COURT: It is page 19, line 19, and then over to the next page through line 5 of the next page [744] where you say you own stock in the Washington Trust, and you are going to keep it because you think it is a good investment regardless of whether the merger goes through or not.

THE WITNESS: And I still feel that way.

Q (By Mr. Verveer) Is that a part of your reflection on your feelings of the Spokane community and its promise for a banking market?

A Well, the Spokane community is a good solid community. Reference has been made to growth, the whole Pacific Northwest, looking ahead to the future, will enjoy growth, maybe not as fast as Florida, Texas and some other places, but in the State of Washington we have communities that will grow a little faster than the others, take the Puget Sound country, Snohomish, King and Pierce Counties, we look upon Southwest Washington, Longview, Vancouver, as growth communities, as well as the Tri-Cities area. Then as far as Spokane is

concerned, I look upon that one as a community of modest growth, but it is a good solid community, it is not a static community or a dead one like Wilson Creek or Washtucna.

Q Mr. Carlson, if this merger is disapproved, will the National Bank of Commerce just give up its efforts to get into Spokane?

A We have been waiting for the Baker-Boyer Bank in Walla [745] Walla for 30 years, and I think we can wait a long time for the Washington Trust Bank.

Q What if you were permanently enjoined from acquiring the Washington Trust Bank?

A Well, I think I would—

MR. MOEN: Well, that is speculative.

THE COURT: Well, that gets into an area—don't scare him like that, counsel. I haven't decided the case yet, it hasn't been appealed, and all that.

A As a result of this trial, I think our relationship with the Washington Trust Bank is going to be closer and more worthwhile in the future, if we can't merge.

Q I would like, Mr. Carlson, if the Court permits, for you to assume that there is an injunction on your merger with the Washington Trust Bank. Will that spell an end to the efforts of the National Bank of Commerce to get into the Spokane metropolitan area?

MR. MOEN: Oh, I think I will object to the question, your Honor. He is just speculating on the future.

THE COURT: Well, I think it is real speculative, and I don't think that is going to help me in making a decision here, because I don't have anything to go on as to what their future will be in that regard. It would be pure speculation either way.

[746] Q (By Mr. Verveer) If the Court will permit may I ask, would you entirely dismiss the possibility?

MR. MOEN: I would have the same objection, your Honor.

THE COURT: That is the same question, Mr. Verveer.

MR. MOEN: You have already ruled on it, your Honor.

THE COURT: You have already won, Mr. Moen. I have already ruled in your favor. He is just trying

to go in the back door with that question, when I wouldn't let him in the front. All right, do you have anything further?

MR. VERVEER: Yes, your Honor.

Q (By Mr. Verveer) Mr. Carlson, did I understand you earlier today to testify that it is possible for your bank to make money where its loans exceed its deposits in communities where its loans exceed its deposits?

A Well, generally in a community where the loans exceed the deposits, we make better money than either in an agricultural community like Dayton, where your loan demand is minimal as against deposits, or in a shopping center where you don't have very many loans, and you have to rely on service charges.

MR. VERVEER: We have no further questions, [747] your Honor.

THE COURT: Mr. Moen, do you have any redirect?

MR. MOEN: Yes, your Honor.

THE COURT: All right, go ahead. It isn't a rehash of what has already been covered, is it?

MR. MOEN: I am going to go into more detail, your Honor.

THE COURT: On what?

MR. MOEN: On Columbia Center. I hate to leave the record like it is, it may go on up, and I would like to get a complete story in the record.

THE COURT: Well, if you go into that any further, then they're going to want to go on recross, and I want to ask you this question, assume that whatever they have tried to establish regarding the acquisition or I mean the intentions, and that's what this amounts to, assume that they have established the intention of the National Bank of Commerce to ultimately acquire that bank, so what?

MR. MOEN: I agree with your Honor, but it has been blown all out of proportion, that it hasn't done a thing except for one thing, does it afford a means of entry into Spokane.

THE COURT: Well, no, what they are trying to [748] show is that the National Bank of Commerce could, if they desired, acquire another bank over in Spokane,

the one that has been named, or they could organize one with the object, rather, they could organize one with the object of acquiring it.

MR. MOEN: We will concede that we have the resources to do that, that is not the issue.

THE COURT: Well, also they hopefully show that the N B of C is likely to do that, if they are not permitted, that is what they are trying to show, and I just don't know that it is worthwhile.

MR. MOEN: We take the position that for a bank to go in and sponsor a new bank of this kind is illegal. That is not what happened in this case.

THE COURT: Well, they haven't acquired it yet, have they?

MR. MOEN: No, they haven't acquired it.

THE COURT: Well, I have some sense, background, et cetera, in this area, and I just don't think that to me or to anybody else who is going to look at the record that this is a prime consideration as to whether or not they had that in mind at the time they went in there. It shows, in my judgment that certainly they had that in their mind, but I don't think that is unusual. That is the way I react to it. And I just [749] think that going into it any further is just going to load the record with something that isn't of any great consequence.

MR. JOHNSTON: Your Honor, may counsel and I confer for just a moment?

THE COURT: Yes, go ahead.

MR. MOEN: Your Honor, the point that we are relying on and want to get into the record is that the purpose of organizing or assisting in the organization of Columbia Center—

THE COURT: Well, to avoid any further discussion, go ahead and ask him, we will go into it if you want to. But we will come out the same door as we went in.

MR. MOEN: Well, your Honor, all I am thinking about is the record.

THE COURT: All right, go ahead and make your record then. Then they can go ahead and recross-examine on it. That is exactly what will happen.

## REDIRECT EXAMINATION

BY MR. MOEN:

Q For the record, Mr. Carlson, what is Allied Stores?
A Allied Stores is a department store chain that operates throughout the United States.
THE COURT: He has already testified to that, [750] he said they own the Bon Marche in Seattle—
Q (By Mr. Moen) How many stores in the State of Washington?
A I don't know, but they have a chain in the Pacific Northwest.
Q Are they a customer of N B of C?
A An important customer of the National Bank of Commerce.
Q Do you have any members of their organization on your board?
A Yes, their regional vice-president is now a member of our board, and his precedessor was a member of our board.
Q What was it that Allied Stores was attempting to do in Kennewick?
THE COURT: Now you see, we have covered this, and here is what I remember is what he said. He said Allied Stores wanted them to come over there because Allied Stores was establishing a shopping center over there, and they wanted the National Bank of Commerce to have a bank over there in connection with their shopping center. Now, isn't that what you said, Mr. Carlson?
THE WITNESS: Yes, your Honor.
THE COURT: All right, you see we are going right back over everything, and I remember it, fortunately.
Q (By Mr. Moen) Let me ask you this question, in your opinion does the experience that you had at Columbia [751] Center afford or suggest to you any procedure whereby you could enter the City of Spokane?
A No.
MR. MOEN: Okay, I will drop it there.
THE COURT: I think, counsel, in the furor here you might have forgotten that he went into the reasons.

As I understand it he got in there because Allied Stores was going to have a shopping center, they wanted a bank over there, and they decided to accommodate Allied Stores, who was a real good customer, they should go ahead and go over there. They got Loney, who was their attorney over there, I even asked him this, they figured he would be a good man to lead the attack. Loney, who is a prominant lawyer, I take judicial notice of that, in the Tri-City area, a former colleague of my associate, Senior Judge Powell, and I have to try all of Loney's cases because Powell won't, when we are in the Eastern District, so I know him real well, and I know about this. I think he went into that in detail, and the record shows it.

All right, is there anything further from him?

MR. VERVEER: No questions, your Honor.

THE COURT: All right, Mr. Carlson you may step down.

Now, do you have someone else who is a short [752] witness?

MR. MOEN: My next witness, your Honor, is a rather long one, I can call him and begin, if your Honor wishes—

THE COURT: Well, we could recess now. You will have to come back anyhow?

MR. MOEN: Oh, yes, he will have to come back anyhow.

THE COURT: Well, it is 4:00 o'clock on Friday afternoon so we can recess. My people don't get time and a half for overtime, so we can recess now until 9:30 Monday morning.

(Conclusion.)

[753] REPORTER'S CERTIFICATE

I, W. L. Mayrand, official court reporter for the United States District Court, for the Western District of Washington, do hereby certify that the annexed and foregoing is a full, true and correct transcript of proceedings had in the above-entitled and -numbered cause, on the date herein-before set forth, and I do further certify that the same has been prepared by me, or under my direction.

[754] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

No. 237-71C2

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MARINE BANCORPORATION; THE NATIONAL BANK OF COMMERCE OF SEATTLE, ET AL, DEFENDANTS

[Filed in the United States District Court, Western District of Washington, Jun. 22, 1973, Edgar Scofield, Clerk. By M., Deputy]

TRANSCRIPT OF PROCEEDINGS held in the above-entitled and -numbered cause in the above-entitled court before the Honorable WILLIAM N. GOODWIN, United States District Judge, on Monday, January 15, 1973, at the United States Courthouse, Tacoma, Washington.

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VOLUME VI

[755] APPEARANCES

RICHARD J. TORRE,
ALLAN S. HOFFMAN,
PHILIP L. VERVEER, and
RONALD SILVERMAN, Attorneys, Antitrust Division, Department of Justice, appearing for and on behalf of Plaintiff;
JAMES WILLIAM JOHNSTON and
R. A. MOEN (of Graham, McCord, Dunn, Moen, Johnston & Rosenquist), and
DANIEL M. GRIBBON, and
CHARLES LISTER, (of Covington & Burling), appearing for and on behalf of Defendants;
JON HARTMAN and

THOMAS McLACHLEN, appearing for and on behalf of Intervenor.

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[756] PROCEEDINGS

(Court reconvened at 9:37 A.M.)

THE COURT: All right, Mr. Hartman.

MR. HARTMAN: Good morning, your Honor. The intervenor calls Mr. R. A. Hanson.

RAYMOND A. HANSON,

called as a witness by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. HARTMAN:

Q Would you state your name and address for the record, Mr. Hanson?

A Raymond A. Hanson, 4715 South Madelia, Spokane, Washington.

Q What business are you in, Mr. Hanson?

A We manufacture specialized construction business—construction machinery, mostly for the building of irrigation canals and related items.

Q Where is your business located?

A In Spokane.

Q What particular functions do the machines that you manufacture, what do they do?

A Well, the primary machines are earth excavators, trimmer [757] machines which excavate the canal to very close tolerances automatically, within an eighth of an inch. The canal, of course, we are talking about is a very large canal—maybe 100 feet or so across the top and up to two or three hundred feet across the top, maybe 30 feet deep. These are partially excavated or constructed by conventional machinery and then the big trimming machine comes along and finishes the excavation and leaves a smooth, accurate surface. And then the next machine is

a—we call it a concrete slip form, which also is automatically controlled, which places concrete lining on the slopes. Actually, it's a relatively thin concrete lining, usually three or four inches thick on a slope maybe fifty to sixty feet long. So it has to be placed rather accurately.

Q Now, where do you sell these machines?

A Well, in most of the world.

Q You sell them in the United States?

A Yes.

Q And throughout the world?

A Throughout the world.

Q To whom do you sell in other parts of the world? Do you sell to governments or construction companies?

A We sell to both governments and construction companies?

Q Which would be the larger purchaser?

[758] A The construction contractors.

Q And how do you do your financing in these foreign markets? Who handles that for you?

A Oh, various methods and ways.

Q Could you describe some of them for us, please?

A Well, sometimes we get a letter of credit, which is supposed to be an irrevocable, confirmed letter of credit, and we take that down to the bank then and turn it into money on an interim financing basis. And then when the shipment is made, why, payment is made according to the terms of the letter of credit. And there are variations of that.

Greece, for example, has another system, and it's the only one they will use. It's really not so well confirmed and it takes the form of a bank guarantee. It is not as merchandisable as a letter of credit.

Q What bank are you presently dealing with on these international transactions?

A Well, we deal with the O N B as our bank and they in turn, not having a foreign department, have a corresponding bank down in Portland.

Q On these so-called irrevocable letters of credit, have you ever had any difficulties involving those where a knowledgeable bank may be able to help?

A Yes, we have quite a bit of trouble with the so-called [759] irrevocable, confirmed letters of credit. They seem to turn up quite a bit of fine print that I think a bank with a good foreign department would help a lot, simply because when we take one down to our bank and they advance us interim money on it, what they are really doing is giving us money on our strength. They know we have an order and they have experience that we are able to deliver the goods. So they don't pay too much attention to what it says on the letter of credit, and I think a bank with more foreign expertise would read those letters of credit and tell us some of the imperfections, let us say, that are in them, and they seem to be in almost all of them.

Q Well, are there any other banks in Spokane which could service your needs presently?

A Well, I suppose that the Seattle-First possibly could, although, we did bank with them once and our other banking relations weren't that good, so we went to the O N B. [760] Q If the National Bank of Commerce gets into Spokane with its substantial foreign banking department, would this be a benefit to you, and if so, how?

A Well, I am sure it would be, either directly or indirectly. If they had a good foreign department there, we might as well go to that bank. Indirectly, if we didn't, and stayed with the Old National Bank, they would certainly have to compete, and give us the same service that the National Bank of Commerce could then offer.

Q What are the gross sales approximately of your company, Mr. Hanson?

A Well, last year it was about $3,000,000.

Q And how about its credit needs? Can you give us an approximation of the kinds and amounts of credit that you use during a year?

A Well, in the past we have gone up to a million and a half, and beyond a little, I guess.

Q Is the Old National Bank large enough to consistenly take care of you on your credit needs, do you think?

A Well, I don't think they will be in the future,

because we are right up against, close to their credit limit now, and our business is expanding.

Q As of right now, how many alternative sources in Spokane do you have to go to?

[761] A Well, there is just one, there is just one store left in town.

Q And if National Bank of Commerce comes into Spokane with a seven and a half million dollar lending limit, would this be of benefit to you?

A Very definitely.

MR. HARTMAN: Thank you, that is all I have.

## CROSS-EXAMINATION

BY MR. TORRE:

Q Mr. Hanson, you mentioned that there was only one other shop in town, other than the Old National Bank. Were you referring to the Seattle-First National Bank?

A Yes.

Q Are you aware that Pacific National Bank has international banking services available?

A Yes.

Q So that you would also include that as another shop in town, I suppose?

A We have talked to them, and they never were able to do us any service to date.

Q Why not?

A Well, I really don't know all the details. I don't handle this personally.

Q You yourself do not handle the international banking [762] functions of your company personally?

A No.

Q So is your familiarity with the problems of letters of credit and their specifics personal or through some subordinate of yours?

A Well, I am personally involved in all of the decision-making and the problems, but I don't personally go down and talk to all of the bankers, and things like that.

Q You mentioned that there were problems with letters of credit, as to some specific condition contained

therein. What were the problems that you had with letters of credit, specifically?

A Well, usually there is an ambiguity in the thing. It will say up on the top that we are supposed to get paid, or that we can draw on the letter of credit, and let us say, for example, on equipment that has been shipped out of Spokane, and then a further condition will say that we have got to have an exporter's receipt. Now the exporter is in New York, so we tell the gentleman we want a receipt, and he says well I will give you one when it is in my possession in New York. I will say no, that isn't what the letter says, and he said it doesn't matter to me what it says, I am not going to fly out to Spokane and give you a receipt. So on the top of the letter of credit it says he is going to pay us when we [763] load FOB cars, but we don't get paid because we don't have the forwarders' receipt, which he won't issue until the merchandise is in his custody in New York City.

Q Do you have legal counsel who advises you as to your international business transactions?

A We have legal counsel, but I don't claim that they have a great deal of expertise about these things. I feel that our own experience about these things is probably greater than we can find legalwise in Spokane.

Q Is the exporter that you mentioned a party to the letter of credit? Is he mentioned in the letter of credit at all?

A Well, they refer to actually, or usually—these are all different—a forwarder's receipt. And he is, the forwarder is usually an agent of the buyer. Sometimes he is our agent.

Q Do you feel that it might be helpful if you had legal counsel that was familiar—

THE COURT: I don't think that is important, what attorneys he has, counsel. Let's get into the area of whether or not there are banks who can handle his account. Whether or not he has to hire a lawyer in New York or London or some place else is not pertinent here.

Q You mentioned that you were doing your international [764] business transactions with the Old National Bank. How long have you been dealing with them?

A Pardon me?

Q How long have you been dealing with them?

A Oh, off and on for 20 years, I suppose.

[765] Q Are you aware that for a long period of time that Old National was leaning on the National Bank of Commerce through a correspondent relationship for international banking services?

A I was aware that there was a working relationship at one time, yes.

Q And that relationship extended up through 1970?

A The relationship extended up and through 1970, approximately, yes.

Q And is it possible that some of the problems that you have had with letters of credit resulted from this relationship with the National Bank of Commerce?

MR. HARTMAN: Your Honor, I would object to that question. I can't see how this witness can possibly know one way or the other.

THE COURT: I don't even get the point to the question. If you mean was it the National Bank of Commerce's fault that he didn't get better service with his letters of credit, is that the point you are trying to make?

MR. TORRE: Let me get to it in a different way:

Q Had you had any problems prior to 1971?

A Yes.

Q Prior to that time the Old National Bank was using the National Bank of Commerce's correspondents along somewhere, [766] is that it, and therefore—

THE COURT: (Interposing) Wait a minute, therefore what?

MR. TORRE: The problems that he had could be attributable to the National Bank of Commerce?

THE WITNESS: I don't agree with your conclusion.

THE COURT: All right, that's enough, he said he doesn't agree with your conclusion.

MR. TORRE: I would like to note for the record that Government's Exhibit No. D-5 is an internal document of the National Bank of Commerce and states that Old National Bank does have expertise in the international banking area and has leaned on the National Bank of Commerce for many years, and one of its customers men-

tioned in the document is Mr. Hanson's company, so apparently the National Bank of Commerce has served Mr. Hanson, and so it is already in the record.

MR. MOEN: There is no evidence in the record of that at all.

MR. TORRE: Correction, your Honor, "the Old National Bank does *not* have expertise and has leaned on us"—that is, N B of C, "for many years."

MR. HARTMAN: I have something out of that document I'd like to note for the record. In the last [767] paragraph, on the second page which says that "it seems to me there is a need in Spokane for international banking know-how, and if we are to acquire eight branches we should be prepared to travel there frequently."

THE COURT: Where is that?

MR. HARTMAN: D-5? D-5.

THE COURT: I have 55 here. D-55 here.

MR. TORRE: It probably should be adjusted to D-5.

THE COURT: Well, let's see.

MR. JOHNSTON: Your Honor, this is a letter dated November 27th. Does that help?

THE COURT: To Jerry W. Ralston?

MR. TORRE: That's right, your Honor.

THE COURT: Let me read it.

MR. JOHNSTON: Rather, it's an inter-office memorandum.

THE COURT: This is in the record?

MR. TORRE: Yes, your Honor, this is already in.

THE COURT: All right, I've read it. And the import to me is that there is a need in Spokane for international banking service, according to the letter. Of course, it is self-serving, but that's what it says.

MR. TORRE: That's right, your Honor, it gives another incentive for the National Bank of Commerce to [768] enter there.

THE COURT: More than that, it says this: "On one occasion the Old National sent its vice-president to spend a day with us in Seattle to get our help putting together export sales financing to Argentina. Old National is a neophyte that got to financing in competition with the

Bank of Washington and the National Bank of Tacoma." It says that "the Old National does not have the expertise and leaned on us for many years." It mentions one of their customers or—an expert—and then he says have to send somebody over to Seattle to try to get acquainted,—whatever that means.

MR. TORRE: With reference to the paragraph quoted by Mr. Hartman, your Honor, the last clause in that paragraph where it says "we should be prepared to travel there frequently," so it indicates that there is no intention, at least, to establish a department of international banking to handle the problems in Spokane.

MR. HARTMAN: I don't think it indicates that at all, your Honor. It just indicates what Mr. Malum's idea was.

THE COURT: Well, I will conclude what it indicates. Go ahead.

Q (By Mr. Torre) What banks have solicited your international banking business, Mr. Hanson?

[769] A Solicited? Offered might be a better word, because I don't know who talked to whom first.

Q I beg your pardon?

A Offered would be a better word than Solicited—because I don't know who talked to whom first.

Q I see.

A (Continuing) You know, I think this whole concept of correspondent banking doesn't serve the purpose because a lot of times we pick up the telephone and call banks. We have called, for example, N B of C for help and they don't get a dollar out of it because we want an answer, so by long distance phone we ask for their help and they have offered their help.

Q Have other banks—has the Seattle-First National Bank ever come to you and tried to sell you their international banking service or have you ever gone to them to seek their services?

A We are not very—well, I guess the answer is mostly no.

THE COURT: What word were you going to use? Not very—friendly?

THE WITNESS: No, we are friendly enough, we are not impressed, let us say, with that department.

MR. TORRE: Do they maintain an international banking department in Spokane?

THE WITNESS: Not what I would call one. They [770] might claim they have that service, I think they do.

Q What would you consider an adequate international banking department in Spokane for your need?

A Well, I would consider that—I think it would really have to be somebody who really knew what he was doing come to Spokane occasionally.

Q You would like someone who was an expert in international banking resident in Spokane or visit Spokane occasionally?

A Well, I think I'd like both.

THE COURT: Next question.

MR. TORRE: Just a moment, your Honor.

Q With regard to your lending, Mr. Hanson, have you been solicited by other banks in Spokane with regard to loans to give you operating funds?

A Well, again, I don't really think it was solicited, I don't think it has been solicited.

Q What has happened, what contacts have you had with other banks?

A Well, periodically we talk to them and we get, occasionally we get some financing or arrange financing for customers. We get some pretty big pieces of paper we have to place and so we shop around to different banks to see what the best interest is we can get. And the chances are we've made a commitment to our customers we thought would cover the interest rates that might be [771] prevailing several months down the road when we finally turn it into an order. So if we've got a piece of paper that's worth 8% we'll try to shop around, for example, to get 6 or 6½, so we put the difference in our pocket. Once in a while it works the other way.

[772] Q And what do you do when you shop around, what banks do you go to and what banks have you gone to and what has been your experience in shopping around?

A Well, there are about four in Spokane that we go to, we mentioned all four names.

Q Would you mention them for the record?

A Well, we went to Washington Trust and you mentioned the one earlier which I—

Q Pacific National?
A Pacific National.
Q And Old National and Seattle-First, those are the ones that you go to when you are shopping around?
A Yes.
Q And have you sold commercial paper to the Washington Trust Bank?
A No.
Q Have you sold commercial paper to the Seattle-First National Bank?
A No, but we got a better rate because we went and—ONB gave us a better rate because we made it quite clear where we had been previously.
THE COURT: The longer you go, counsel, the worse it gets.
MR. TORRE: It depends on the way we look at it.
THE COURT: He has demonstrated competition, apparently. He goes to these different banks and one of [773] them finally decides to give him a better rate. Go ahead.
Anything further?
Q (By Mr. Torre) Do you think if you had a fifth bank to offer your commercial paper to, that it would enhance the competition for that commercial paper?
A I certainly do.
MR. TORRE: Thank you.
MR. HARTMAN: Your Honor, may I ask one question?
THE COURT: All right.

## REDIRECT EXAMINATION

### BY MR. HARTMAN:

Q There is a reference in this letter that Mr. Torre referred to, Government Exhibit D-5, concerning a company in Spokane which receives an E award. Mr. Hanson, are you familiar with an E award and would you tell us what that is, please?
A Yes, we have received two E Awards, they are both for the same thing. About four years ago we got an E Award for excellence in export, and this was an award

given by our government in recognition, and I suppose, to further inspire exports. And then about a month ago we got the E Star Award, which is a higher award, for continued effort and results in export.

[774] MR. HARTMAN: Thank you.

THE COURT: Anything further on the E Award from the plaintiff?

MR. TORRE: No, your Honor.

THE COURT: All right, you may step down. Thank you, Mr. Hanson.

MR. McLACHLEN: The intervenor calls Mr. Neil Degerstrom.

NEIL DEGERSTROM,

called as a witness on behalf of the intervenor, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. McLACHLEN:

Q Would you state your name and address for the record?

A Neil Degerstrom, D-e-g-e-r-s-t-r-o-m, East 508 Rockwood Boulevard, Spokane.

Q Would you give us a little bit of your background and tell the Court what you do for a living?

THE COURT: I already know, but then he had better put it in the record.

A My educational background is a degree in Civil Engineering from Washington State. I am currently on the Board there of the College of Engineering Research, past president of the Spokane Associated General [775] Contractors and currently a director. And our business is heavy and highway construction, building highways, airports, dams, railroads and openpit mining.

Q About how many employees do you employ?

A It varies between 175 and 300.

Q You mentioned a job such as roads, airports; are such jobs awarded on the basis of competitive bidding?

A Yes.

Q Can you explain basically what your financing needs are in your business?

A Yes, currently we are using about two and a half million dollars in borrowed money, that is long-term equipment loans, real estate loans and open account loans.

Q When you start on a new job, as I understand it, is that the point where you need it?

A We develop cash needs at two points, one is when we start a job, equipping it, moving on the job, preparing labs, offices, mobilization, and the other place we get into high financing needs are when we are financing several large jobs because of the large amount of retainage retained by the owner.

Q Do you presently do business with Washington Trust Bank?

A Yes, I do.

Q Does this bank do any other construction business?

A Yes, Washington Trust is kind of—has a reputation [776] in Spokane of being a contractor's bank, they are very familiar with construction accounts.

Q Have you ever had an occasion arise where you needed to borrow more money than Washington Trust could legally loan to you?

A Yes. In fact, we are in that position most all the time. Approximately two years and eight months ago we received a large long term contract with Monsanto Chemical Corporation. We were in joint venture with Dravo's Corporation to finance approximately $800,000 worth of machinery necessary to start that job. Through the Caterpillar dealer in Spokane, Bower Machinery, we were able to obtain money from the Spokane and Eastern Bank, Seattle-First, but we had to pay eleven and one-half percent for it because Washington Trust couldn't get any correspondents in a tight money market.

Q Was this method of financing more expensive to you than going exclusively through a commercial bank?

A We were paying about three percent more than we were paying at Washington Trust.

Q Have you ever approached Seattle-First for a loan or O N B or Pacific National?

A No, I have not. We have several loans through the Seattle-First and through the Caterpillar dealer, Bower Machinery, and we have currently in the neighborhood

[777] of 650,000 with the Seattle-First through Bower Machinery.

Q As I understand it, Seattle-First has a legal lending limit of about $12,000,000, I believe, which would be large enough to accommodate your financing needs; would there be any other reason or any reason why you wouldn't want to just move over to Seattle-First?

A Well, the first thing, a bank I think is a little bit like a wife or a doctor, in the construction business they have to get to know you. It's a business where it is capital intensive, the statements are not like in the ordinary business. I would say we have about a zero working capital about half the time because of the high retainages and cash flow problems, and it takes quite awhile for a bank to get to know you. My father banked at Washington Trust and I have since I have run the company since 1950, and I like their service and they know me. They have worked very hard to fulfill my needs, but their limit, of course, is way too low for my present needs.

Q Assume you went to Seattle-First, changed your whole banking relationship, money gets tight, what would you estimate would happen as a new customer?

A Well, when money is tight, the newest and the weakest customers are the first to be said no to. It's [778] extremely important to us in our bidding that we have cash available, and that we know we can get it and, of course, know at what rate we can get it because that very much influences our bid.

Q Well, if N B of C were to enter Spokane through a merger, could you see any effect on the interest rates that you would pay for money?

A I would certainly save money on my excess borrowings. When I have to go through a machinery dealer to finance—or the Washington Trust has to go to a correspondent bank, I am paying an extra half percent or percent.

[779] Q One last question. You just stated that—you talked about making competitive bids. With having to pay a lower interest rate for money, would that allow you to be more competitive in your competitive bids for public projects?

A Very much so, interest is a very definite cost. The approximation of the interest we will pay this year will be in excess of $150,000, and our volume will probably be eleven and a half million, so it becomes a substantial percentage.

MR. McLACHLEN: I have no further questions.

THE COURT: All right, cross-examination?

CROSS-EXAMINATION

BY MR. HOFFMAN:

Q Mr. Degerstrom, you mentioned an incident that occurred apparently a few years ago when Washington Trust was unable to obtain overline loans through its correspondents. When was that?

A That will be about two years and eight months ago, that would be in April of—

Q Of 1970?

A Of 1970, yes.

Q And you said that was because of a tight money situation prevailing at the time?

A Yes.

[780] Q Since that time has that ever recurred?

A Not at eleven and a half percent.

Q That means that you were able—

A Let me say that we have had to pay a premium for money, but not eleven and a half percent.

MR. HOFFMAN: I have no further questions.

THE COURT: All right, do you have anything else?

MR. McLACHLEN: No further questions.

MR. HARTMAN: The intervenor calls Mr. E. D. McCarthy.

E. D. McCARTHY,

called as a witness on behalf of intervenor, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARTMAN:

Q Would you please state your name?

A E. D. McCarthy.

Q And what is your address?

A 10230 North College Road, Spokane.

Q What is your business, Mr. McCarthy?

A I really have three businesses, divided,—E. D. McCarthy, Inc. is a development and real estate brokerage [781] firm, McCarthy Management Corporation is a management firm, and Inland Insurance Associates is an insurance agency in which I am a major stockholder.

Q What kind of activities is your development firm involved in?

A Well, we have a development firm that is largely oriented to building industrial and commercial buildings, putting shopping centers up for mainly strong regional and national credits in the Northwest.

Q Where are these shopping centers located?

A Most of the shopping centers of course, by number, are located in Spokane, however we have been involved in centers in Seattle, Elkland, Nevada, Great Falls, Montana, and points in between.

Q Now, what kind of financing requirements do you get involved in when you are developing one of these shopping centers?

A Well, of course they vary. There are many ways to finance commercial properties. On our long-term financing we have used many insurance companies, mutual banks, trust funds, et cetera. And on short-term we have been involved with some of the same that we have in the long-term, some time they are interim as well as long-term, and then we use the local banks and mutual savings.

Q What banks are there in Spokane presently that you have [782] dealt with on this?

A Well, our primary bank for this purpose is the Old National Bank, that is our home base. We have had experience with Fidelty Mutual, Washington Mutual, Washington Trust. I believe we have done some business with Seattle-First, although that has been a long time ago, I am not sure.

Q Have you done financing of this type in cities outside of Spokane?

A Yes, we have.

Q And do you prefer to do this type of financing locally, or is it just as adequate to do it outside of Spokane?

A Well, it is important to have local banks, people who know you, and know your track record, that is extremely important. And we do of course use local connections by far the most. In recent years, well, ever since we started, which has been 23 years ago, each deal is becoming increasingly more difficult to do largely because of government regulations. It used to be that a zoning action was a very simple thing, and now it has become a major performance, very often with lengthy delays and so on. We often deal in option properties, and we often, very often get to the end of people's patience who own the land, and find that they have no time to finance, or draw the plans, and so on. So we [783] find even though we may have an economic unit in the making, we are delayed by local and county and other governmental requirements to the point where our local banking financing is becoming increasingly important, and it is just a matter of reserving the property assembly so we may accomplish the deal.

Q What size financing are we talking about, could you give us a little more specific example?

A Yes, this last year our average is much lower than usual, I imagine our average last year was $300,000. For the previous years, it was well over a million dollars, so you see they run in cycles, we do repeat business, such as institutions like K-Mart, Safeway, Albertson and so on.

Q So insofar as your average deal is concerned, how many alternative sources of this kind of credit do you have in Spokane?

A Well, on long term financing of course we have the whole world that we can apply to, it is a matter of whether we have time to do so. The reason that we use the Old National Bank might be more helpful to answer your question; on the interim financing situation, when we are building with a strong credit, it is not illegal, but it is sometimes regarded as imprudent by banks you don't know, for instance, to borrow up to 90 percent [784] of a K Mart or a Safeway, and so on. If I go into a strange bank in Seattle they will probably say where is your takeout. Whereas at the Old National Bank I don't abuse it,

but once in a while I can walk in and say here is my lease and here are my costs, and I can borrow 90 percent without a takeout. It is extremely important for a small developer to have that kind of relationship with a bank.

Q Now if the National Bank of Commerce should enter Spokane through this merger, would that be beneficial to you, and if so how?

A Well, in a very selfish way. I have dealt with the Washington Trust for a very long time, and we feel close to them. Were this merger to take place, we feel it would add another arrow to our bow in terms of being able to do things, again not illegal loans, but ones that by policy very often are not made unless the banking institution is very familiar with the track record, knows what you can do, and so on.

MR. HARTMAN: I think that is all I have.

THE COURT: All right, who is up next? Let the record show that the reason I say that is because this is a rotating proposition as far as the government is concerned. As I understand it each takes his turn of the four attorneys, so the record will show why I [785] ask who is up next.

MR. VERVEER: We try to be nondiscriminative, your Honor.

THE COURT: Well, I understand. It is a kind of a training forum I take it, you have a couple of very young lawyers, and the old heads are young too.

MR. VERVEER: I hope, your Honor, the record will show that I am one of the very young lawyers.

## CROSS-EXAMINATION

BY MR. VERVEER:

Q Mr. McCarthy, I gather from your testimony that it is only in terms of short term and interim financing that you are particularly concerned with having a Spokane-based bank, or source of funds, is that correct?

A Well, if I led you to believe that, that is wrong. We are interested in both interim and long term, and the closer we can get to major institutions that can supply us money in our bracket, the better off we are.

Q But you did say with respect to long term financing that you could in a sense draw from the whole world, is that correct?

A Well, the difference is this. We have found that we can borrow at least as competitively and sometimes better with our local sources, our local funds, local trust [786] funds, local banks and so on, who all have of course many relationships in the long term field. But the matter of getting a loan processed with Equitable Life or Travelers and so on, is a matter of 60 to 90 days, very often, after the deal is put together, to get a takeout, and then you have to arrange for your interim. Whereas if the bank is one which you know, and that you have a record with, and the mortgage people that you have a record with, you very often can reduce that time sometimes down to a week or two, depending of course upon the meeting dates of the various committees and so forth. But time becomes extremely important, and I think only someone who is down to the frustration of zoning, and so forth, and appeals, and neighborhood committees and various other things, realizes how important time gets to be in these projects.

Q So the local financial institutions are particularly important where time becomes an important factor?

A Right.

Q Where there have been unforeseen delays and things of that nature?

A That is right.

Q Does that situation occur fairly often in your business?

A Well, I would say the answer is yes, definitely.

Q I believe your testimony was that although last year [787] the average financing needed for projects was only about $300,000, and previously the average was over a million dollars, am I correct?

A Yes.

Q Is that within the lending limit of Washington Trust Bank?

A I believe, although the Washington Trust Bank's limit is a little over a million, they have as a matter of policy, not extended loans over a million. I should explain that lines with relationship to commercial real estate sometimes are put into the secured area, and my personal

line is not affected by, or at least only in part, by the mortgage.

Q Have you tried to finance the real estate portion of your development through Coast Mortgage Company?

A I know the Coast Mortgage people, and we have had some relationships. We haven't made a deal, but I know of their activity.

Q Would it be possible to finance through them, or approach them?

A It would be possible, if they were competitive, yes.

Q You said that the Old National Bank will make these 90 percent loans on the basis of their relationship with you, and their knowledge of your business, is that correct?

A Yes.

[788] Q Have you had occasion to be unhappy with Old National Bank, or to be disappointed with them in this respect?

A I think they have done a good job for me.

MR. VERVEER: We have no further questions.

## REDIRECT EXAMINATION

BY MR. HARTMAN:

Q Mr. Degerstrom, Mr. Verveer asked you regarding Coast Mortgage. Do you happen to know whether they deal primarily in residential properties or commercial properties, or what?

A Well, my impression, I should say, because I am not positive, is that they are a well balanced mortgage firm, I believe they have a great lot of FHA and residential, but they do have people interested in commercial as well.

MR. HARTMAN: That is all.

THE COURT: Anything further?

MR. VERVEER: No, your Honor.

THE COURT: All right, you may step down.

MR. McLACHLEN: The intervenor will call Mr. Jacklin.

[789] ARDEN JACKLIN,

called as a witness by and on behalf of intervenor, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. McLACHLEN:

Q Would you please state your name?
A Arden Jacklin.
Q What kind of business are you in?
A I am in the seed business.
Q When you say seed, what kind of seed?
A Production, processing, wholesale and retail and merchandising of seeds, with strong emphasis on Kentucky blue grass, turf grass seed.
Q How many employees do you have?
A We will average about 42 permanent, and it goes up 100 to 110 during the summer, during harvest and so forth.
Q Would you characterize your business as an expanding business or one that is contracting?
THE COURT: Is that your business on the way to Hayden Lake?
THE WITNESS: Yes.
Q Would you characterize your business as an expanding business?
A Well, it is expanding. We have merged with another [790] larger company.
Q Can you give a rough estimation of how much grass seed is grown in the Spokane area, not just your company, but that is sent out?
A In the confines of the Inland Empire twenty to twenty-five million pounds of seed, principally turf grass seed, Kentucky blue grass being the largest one.
Q In terms of other areas that grow seed in the country, how does Spokane compare?
A Well, the Inland Empire area would approximate one-fourth to one-third of the very large growing area.
Q Where does your company sell these seeds?
A Our principal markets are in the United States. However, we are getting closer and closer, and have more activity in the export market.
Q I don't really understand too much about grass seed. You just don't plant one kind of grass seed, as I understand it, is that correct?

THE COURT: Ask him just to describe what he is doing. I have seen his property out there east of Spokane, I drive right past it out there going out to play golf.

Q Do you mix these?

A Yes, we raise a great number and kinds and varieties. At the present time Kentucky blue grass, and we do [791] 18 other different varieties of Kentucky blue grass.

Q Do you ever buy seeds as well?

A Oh, yes. Approximately one-fourth of our production is from our own ranches and about three-fourths are from growers' ranches.

Q Do you buy internationally as well?

A Yes, we do buy rather heavily in Holland, some in Sweden, some in Denmark, a little in Germany.

Q I think you covered this, but just for the record, is your company presently expanding its foreign trade operation?

A Well, we are just on the verge of it. In our past operations we have not been strong in our export trade preferring to—well, not having expertise in it, for one thing, and the connections to make them, so we have merchandise for export largely through some of our competitors, for example, Northrup King in Minneapolis, who would handle the export business of our production.

Q Well now that you are on the verge of expanding into international markets, would a bank with a strong international banking department, could you see that being of any help to you?

A It is our feeling that we must have this if we are going to go strongly into foreign trade.

Q Can Washington Trust Bank give that service to you?

A No.

[792] Q Are there any problems that you could think of in conducting your international banking services through a correspondent bank?

A I'm not certain about that. We have attempted several times to make exports particularly into South America, Ecuador and Chile, and I must frankly say that we have never been successful yet. We don't get paid if something goes wrong.

Q Is there any problem in knowing who you are dealing with when you are selling and buying in international trade? Who do you rely on, who would you think you could rely on to tell you about the credit rating of your customers that you have never seen?

A Well, we haven't done too much of this because we haven't had the facilities to do it. Therefore, I really can't answer your question there.

Q Why don't you go to Seattle-First National Bank; they have a large international banking department.

A Well, the Washington Trust started—was the basis for the financing of our company, and it has been our bank, it is our bank, and I would not be favorable to attempting to change or fragmenting our business.

Q Would it be of any benefit to you in your industry to have another source of international banking services in Spokane, which you would have if the National Bank of [793] Commerce entered Spokane through this merger?

A Yes, within the confines, however, I hope, that would be within the framework of the Washington Trust Bank or its affiliate.

Q Would you consider this to be additional competition?

A I would.

Q To your knowledge are there other agricultural products that are grown in Spokane which are exported to foreign countries?

A Well, there is general knowledge that the Inland Empire, the Spokane area, is a large producer of wheat, peas, lentils, other feed grains, and a good percentage—or at least a portion of this is exported.

Q Would you think that the people involved with these exports would also need international banking services?

A It would be my personal opinion that they would.

MR. McLACHLEN: I have no more questions.

## CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr. Jacklin, you testified that the correspondent

banking relationships have not served your needs in the past?

A No, that isn't the gist of my testimony. My testimony is that we are to the point of getting into this export business. We haven't done much of it in the past, we [794] are just delving into it, and we see the need for some help.

THE COURT: Earlier you said Northrup King in Minneapolis is the one that you export through because of your particular situation and lack of knowledge, is that the idea?

THE WITNESS: We have chosen to take that route.

THE COURT: All right.

Q (By Mr. Silverman) Are you aware of the fact that Washington Trust has a correspondent relationship with the National Bank of Commerce?

A Yes.

Q If the National Bank of Commerce could provide you international services through a correspondent relationship with Washington Trust, would that serve your needs?

A I don't know what the National Bank of Commerce would get out of it in the present relationship, and I don't know how to approach them. We would probably go to Washington Trust, from that point on I wouldn't know how I would approach National Bank of Commerce for help.

Q Have you ever talked to Washington Trust about having them approach N B C?

A No, we have chosen to take this other route, we haven't gotten into this whole blown thrust of export shipping, export business.

[795] Q You have testified that on one occasion I believe you were unsuccessful in your attempts to export to South America?

A We exported a couple of times, once to Chile and once to Ecuador, that we were unable to consummate possibly due to our ineptness. However, it seemed to be involved with various documents and money exchange and so on. If I knew the answer of why we lost out on the deals, I would have learned something. I don't know why we lost out.

Q Well, who handled the international banking aspect of that deal?

A We attempted to go direct.

Q You spoke to no bank then in Spokane?

A No.

Q You also testified that you have a long-standing relationship with the Washington Trust Bank?

A Right.

Q And you sort of have preferred to maintain that relationship?

A Yes, we do.

Q Do you know whether or not that relationship will be maintained if this merger is consummated?

A Well, from our standpoint it will be maintained.

[796] Q Why is that?

A Well, it is a good bank and we like the personnel, we like the service and we have gotten along fine.

Q Is it not true that if this merger is consummated that a corporate entity would own that bank?

A I would presume so, yes, and possibly for the good.

Q Have you ever talked to anyone at Washington Trust about the international services that would be available if the merger were consummated?

A Yes.

Q What have they told you?

A They would, in essence—they don't even have a department now, have a department where we would have access, and closer access to have assistance in international trade.

Q If you met difficulty with the international trading services that the new bank would provide, would you go to another bank?

A We might maintain our present stature and go through—

THE COURT: Well, that's a ridiculous question and I am going to sustain an objection to that.

MR. SILVERMAN: Do you know other banks in Spokane providing international services?

THE COURT: We've gone into that how many times now, counsel? Every man that gets up here has asked [797] that same question. They have one bank over there

and that is Seattle-First National in the international banking and the Pacific National. We already know that. That's the problem we have with different lawyers taking turns here—we already know.

MR. SILVERMAN: Well, your Honor, if we can establish that there are currently—

THE COURT: It's already been testified to that there is international banking service because Seattle-First and the Pacific National—it's already been testified to that, at least Seattle-First, hasn't it?

MR. SILVERMAN: That's correct. That is established, we have no further questions.

## REDIRECT EXAMINATION

BY MR. McLACHLEN:

Q Now, you said that you are just getting into this international trade aspect of your business; at this stage would it be helpful to your bank to be able to give you experienced counseling and advice, tell you what route you should follow in getting into this export trade?

A This would be my first port of call, yes.

MR. McLACHLEN: I have no further questions.

THE COURT: Anything further. All right, thank you.

[798] R. NEIL WILLIAMS,

called as a witness by and on behalf of the intervenor, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. HARTMAN:

Q Would you state your name for the record, Mr. Williams?

A R. Neil Williams.

Q And your address?

A South 4407 Helena, Spokane, Washington.

Q What is your business, Mr. Williams?

A Well, I'm in the truck and trailer business and in the leasing business and we have four companies.

Q What kind of trucks do you sell?

A Kenworth Motor trucks and Timke trailers.

Q Can you give us some idea of what the average cost of one of your tractors might run?

A Well, the cross-sectional cost of the average year's sale would be probably 28,000 a year just for the truck. The trailers vary widely.

Q What kind of inventories of these trucks do you maintain?

A Well, our average inventory would be somewhere around $500,000 on the trucks, with the peaks and valleys.

Q $500,000?

A That's new trucks, not used.

Q And how do you finance that inventory?

[799] A I floor the trucks and trailers.

Q Who do you finance that through?

A Washington Trust Bank handles our account.

Q What other kinds of financing needs do you have?

A Well, the leasing business is a tremendous requirement for capital using money.

Q Have you also had occasion to expand your facilities in recent times?

A We are just now completing an expansion program on the main facility in Spokane.

Q How do you finance that?

A Well, apparently the savings and loan institutions are not very receptive towards commercial real estate loans and we are proceding with refinancing our construction and our existing building in Spokane with the Washington Trust Bank.

Q Now between your leasing operations and your inventory financing, and now currently in your building expansion, have you had occasion to reach the Washington Trust Bank's lending limits?

A Well, we've been bumping that for quite some time, in fact we've had to withhold any flooring because of reaching our ceiling.

Q Can you go to another bank in Spokane?

A Well, some years back we were in the Dart off-highway [800] business—and it was necessary to—

Q What was that?

A That was Dart trucks manufactured in Detroit, they're quite large trucks and they run anywhere from, some of them run two or three hundred thousand dollars a piece. At that time of course Washington Trust could not handle our account and it was necessary to overline with Coastal banks wherever possible.

Q Was this an advantageous way for you to do business?

A Frankly, no. When money gets tight as we've all experienced it recently, it is difficult enough to get money locally without going to a foreign bank or a strange bank and expect them to pick up the loose ends.

Q At the present time what other alternative sources, bank sources are there for you in Spokane?

A From the standpoint of our business, that is you understand new trucks and trailers, we would hesitate to change from doing business with the bank we are now, they understand the business better than any other bank in Spokane as far as I can see. I think Washington Trust as such does more business with our customers, with our type of customers, which is of benefit. They understand who we are doing business with.

Q Now, you are in the leasing business, or considered going into it, or what is the status there?

[801] A Well, we are in it, very limited, in a very limited manner because a great amount of capital is required.

Q Does Washington Trust have that capital available insofar as you know?

A Well, not at this point, we are right up against the limit now.

Q Now counseling and advice in leasing equipment, do you get that from Washington Trust?

A Well, I would have to say that we haven't asked for any counseling on leasing.

Q Have they offered any?

A No, I would say no.

Q Now, Mr. Williams, if the National Bank of Commerce were to come into Spokane through a merger and they have a larger lending limit, would that be beneficial to you?

A Very beneficial for a number of reasons. The ability to loan would be increased and the credit check, collections, statewide would be helpful.

We have a branch in Yakima, of course, and there is no branch of the Washington Trust Bank in Yakima.

MR. HARTMAN: I think that's all I have, your Honor.

THE COURT: All right, anything you'd like to ask Mr. Williams about his direct?

[802] CROSS-EXAMINATION

BY MR. TORRE:

Q Do you have any other banking relationships with other banks other than Washington Trust?

A We have a line of credit at the First Security Bank in Idaho for paper. We have an account with the National Bank of Commerce in Yakima which is merely payroll and accounts receivable and accounts payable.

MR. TORRE: I have no more questions.

THE COURT: All right, you may step down. Now, you call another witness or do you have another question of this witness?

MR. McLACHLEN: I'll call another witness, your Honor.

THE COURT: Well, all right, we'll take a brief recess now, and Mr. Williams can be excused. Then you may call your next witness. All right, Court will be at recess.

(RECESS)

[803] THE COURT: All right, Mr. Hartman, you or your co-counsel can call your next witness.

MR. McLACHLEN: Intervenor calls Mr. Leonard Maxey.

LEONARD MAXEY,

called as a witness by and on behalf of Intervenor, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. McLACHLEN:

Q Would you state your name and address for the record, please?

A Leonard Maxey, East 620 High Drive, Spokane, Washington.

Q Would you tell us what kind of business you are in?

A Hollister-Stier Laboratory. We manufacture biological products, primarily allergies.

Q And allergies are what?

A Well, they are the substances from plants, such as pollen, or foods, dusts, that cause people to sneeze and have asthma.

Q And you are the fellow who supplies the allergies when they shoot you with injections to desenitze you?

A We manufacture and distribute these products.

Q About how many employees do you have?

A In our Spokane plant about 85.

[804] Q How about otherwise?

A We have several branches in the United States, six, one in Canada. We have a total of about 150, -60 employees.

Q Do you have any other offices outside the United States?

A We have joint venture in France, we have a licensee in Japan.

Q Who takes care of your general financing?

A We are a wholly owned affiliate of Cutter Laboratories. We don't have too much problem with financing.

Q You have mentioned you have foreign subsidiaries, with your joint venture in France, how did you set that up?

A Well, this occurred about 1964 or '65, and at that time since there was a bank in Spokane that had a satisfactory foreign department, we used the Morgan Guaranty Bank representative to handle the exchange of funds and stock issue and an international legal firm to handle the legalities.

Q And just for the record, Morgan Guaranty is where?

A I think their home offices are in New York City.

Q If you ever had to do this again, set up a subsidiary overseas again, would you prefer to do it through a local bank in Spokane?

A We certainly would. It had to be done entirely by correspondents.

[805] Q Are you involved in direct sales overseas from your Spokane operation?

A Yes, we sell in every country outside the Iron Curtain.

Q How do you communicate with these foreign companies that you deal with? Does a bank ever help you out?

A Yes, we have to call in the bank at times. We deal directly for the most part—we do have some language problems and currency exchange problems.

Q Would it be helpful to you, would you think, to have a bank with offices overseas near your subsidiaries?

A I am sure it would be.

Q If the National Bank of Commerce comes into Spokane through this merger to provide an alternative source, another source for international banking services, would you consider that to be competitive?

A I would definitely think that is true.

MR. McLACHLEN: I have no more questions.

CROSS-EXAMINATION

BY MR. HOFFMAN:

Q You mentioned that your company is a subsidiary of Cutter Laboratories?

A Yes.

Q Where are they headquartered?

A Berkeley, California.

[806] Q And you said that you had business locations in other places in the United States?

A Right.

Q And where are they?

A Within the United States?

Q That's right.

A We have a branch in the San Francisco area, the Los Angeles area, Dallas, Chicago, Pennsylvania, and at Atlanta, Georgia.

Q And do you rely on your parent company, Cutter Laboratories, to arrange financing for you?

A Well,—

MR. McLACHLEN: I think I asked him that question before.

THE COURT: He can answer it.

A To date we have been providing them with funds rather than requiring financing.

Q (By Mr. Hoffman) So you have been able to get enough funds on your own so that you could even go so far as to supply Cutter Laboratories with some financing?

A As our parent company, we do move money from our company to theirs.

Q Do you happen to know the bank that Cutter Laboratories uses primarily?

A Well, I think at present they are using Wells-Fargo.

[807] MR. HOFFMAN: No further questions.

REDIRECT EXAMINATION

BY MR. McLACHEN:

Q I want to make one thing clear, I don't know that it is clear right now, but you said that Cutter handles your general financing; do they handle your international banking operations?

A No. As a matter of fact, we operate very autonomously, we arrange our own mergers, we arrange, if we would need financing, we would arrange that primarily ourselves.

MR. McLACHLEN: No more questions.

THE COURT: Thank you.

(Witness Excused.)

MR. HARTMAN: The intervenor calls Mr. Merton Howard.

[808] MERTON L. HOWARD,

called as a witness by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. HARTMAN:

Q Would you state your name for the record?
A Merton L. Howard.
Q And your address?
A Route 4, Box 16-A, Spokane.
Q And what is your occupation, Mr. Howard?
A County Treasurer.
Q How long have you been County Treasurer?
A Since December 1, 1958.
Q And what are the duties of the County Treasurer?
A Well, part of the duties of the County Treasurer are the custody and the processing of funds of the County and its governmental subdivisions, from paying the warrants that pay the bills to the investment of moneys, when available, and the selling of bonds for school districts, and so forth.

Q Do you have in your position as County Treasurer —do you have occasion to become familiar with the needs of the subgovernmental districts within your county, their financial needs?

A I do some of them.

[809] Q Would you first of all tell us what kind of subgovernmental districts are existent in Spokane County?

A Well, we have school districts, fire districts, water districts, irrigation districts, library districts, airport.

Q Do those districts from time to time have needs to secure outside financing?

A Yes.

Q And is there an area in securing this financing in which they find it somewhat more difficult?

A Well, many of the issues under a million dollars takes negotiating through the area at home normally.

Q Are regional and national lending agencies interested in those issues particularly?

A The big concerns are not, no.

Q What financial institutions do you have in Spokane presently that show an interest in that kind of an operation?

A Well, we have the Old National Bank, the Sea-First, and sometimes Pacific National, and then there are bond firms once in a while that take an interest, such as Murphey Favre or Blythe & Company.

Q Once in a while?

A Once in a while.

Q If the National Bank of Commerce were to come into [810] Spokane through this merger, what would you foresee as the benefit, if any, to these local government agencies as far as financing?

A To small areas that they are in in Spokane at the present time, they have taken quite an interest in the past, and I would assume that if they were in the City of Spokane they would take a farther interest or greater interest.

Q Would that give you an additional source to look to for this kind of financing?

A It would.

Q Now, Mr. Howard, do you as part of your duties as Treasurer—are you involved in investing moneys for Spokane?

A Yes.

Q Do you use re-purchase agreements?

A We do.

Q Could you describe for the Court what a re-purchase agreement is?

A Well, investments under a re-purchase agreement is the investment—buying of securities for—held by the bank for a short time with the privilege of selling it back at a set rate. That is normally used by us for one day to 18 days normally.

Q How many commercial bank sources of financing re-purchase [811] agreements do you presently have in Spokane?

A There are two at the present time.

Q And who are they?

A The Old National Bank and the Seattle-First.

Q If the National Bank of Commerce were to enter Spokane by means of this merger and they were interested in these re-purchase agreements, do you think that would have any advantage for you?

A It is possible that increasing the competition might because we do know that under two banks we have obtained better rates than some of the counties around us with only one. So it would be possible we could anticipate better rates.

Q And when you obtain competitive rates, Mr. Howard, who is it that ultimately benefits?

A The taxpayer or the community.

MR. HARTMAN: Thank you very much. That is all I have.

## CROSS-EXAMINATION

MR. SILVERMAN:

Q Mr. Howard, has Washington Trust Bank ever bid on any of the governmental bonds?

A I believe that Washington Trust in combine—that is, affiliated with other banks, I should say, have purchased [812] a number of issues in the past, larger issues, yes.

Q What other banks would they affiliate with when they made their purchases?

A I cannot recall.

Q Is it possible they were affiliated with one of their correspondents?

MR. HARTMAN: He just said he couldn't recall, your Honor.

THE COURT: Well, he asked him if it's possible, I'll let him answer if it's possible.

A It is possible.

Q (By Mr. Silverman) Do you know if the National Bank of Commerce was affiliated at any time with the Washington Trust Bank when they bid?

A I really do not remember.

Q Could you describe the circumstances under which the National Bank of Commerce has expressed an interest in bidding the governmental bonds in the past?

A Do you mean—yes, on bond issues within the county, they have purchased bond issues in the Deer Park area and in Medical Lake area in the recent past that were issued.

Q And you feel if the National Bank of Commerce came into Spokane, that you would have another source of bidding, a bidding source?

[813] A I would think so, yes.

Q Wouldn't you then be eliminating the Washington Trust Bank as a bidding source?

A Well, the Washington Trust as a bank individually, to the best of my memory, has not purchased or participated in any of these issued purchases by one bank.

Q But they have been involved in an affiliated relationship?

A It is—my memory is, I'm not sure, I would think since most of the banks at home have, I think that they have participated sometime in the past in a large combine, or at least if not, they have represented some other bank in a purchase because they have submitted bids to Spokane County.

MR. SILVERMAN: No further questions.

THE COURT: All right. Anything further from Mr. Howard?

MR. HARTMAN: That's all I have, your Honor.

THE COURT: All right. Thank you, Mr. Howard.

MR. HARTMAN: That is all the witnesses the intervenor has.

THE COURT: All right, Mr. Moen.

MR. MOEN: The defendants will call Mr. Philip H. Stanton.

[814] PHILIP H. STANTON,

called as a witness by and on behalf of the Defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MOEN:

Q Mr. Stanton, would you please state your name?

A Philip H. Stanton.

Q And your residence address?

A East 1114 Christmas Tree Lane, Spokane, Washington.

Q And how long have you lived in Spokane?

A I was born and raised in Spokane, forty-two—forty-three years.

Q By whom are you employed?

A Washington Trust Bank.

Q What position do you hold with the bank?

A I am presently President and Director.

Q How long have you been the President?

A I was made President in 1962.

Q How long have you worked for the bank?

A I joined the bank on more or less a full time basis in 1952 when I left college.

Q Are you now or have you in the past been a member or an officer of any banking group or organization related to banks?

A Yes, I am presently the immediate past president of the [815] Washington Bankers Association. I have completed a six-year term as a Director of the Seattle Branch of the Federal Reserve Bank of San Francisco, and I have been a state representative of the Association of State Supervisors.

MR. MOEN: I wonder, your Honor, if I could ask the Clerk to mark that map for identification.

THE COURT: You want Mr. Stanton to step down and testify from the map?

MR. MOEN: Maybe for a few questions.

THE COURT: We can mark that for the purposes of identification.

MR. MOEN: I would suggest a marking of Defendants' Exhibit B-1.

THE COURT: That is a map of the City of Spokane?

MR. MOEN: A map of the county.

THE COURT: And the county, Spokane County.

THE CLERK: This will be marked as Exhibit 10.

THE COURT: All right, Exhibit 10, identification 10. Do you want to offer that for illustrative purposes, is that the idea?

MR. MOEN: All these maps are going to be for illustrative purposes.

THE COURT: All right. Any objection to that?
[816] MR. HOFFMAN: No, your Honor.
THE COURT: It will be admitted then.

(Defendants' Exhibit No. 10 was marked for identification and admitted into evidence.)

MR. MOEN: The smaller map will be marked as Defendants' Exhibit 11.
THE CLERK: Defendants' Exhibit 11 marked for identification.
THE COURT: All right.

(Defendants' Exhibit No. 11 was marked for identification.)

Q (By Mr. Moen) What has been marked for identification as Defendants' Exhibit 10, is that a map of Spokane County?
A Yes, it is.
Q And does it show all the banking offices of Washington Trust Bank?
A I believe it does, Mr. Moen. The banks are represented by various colored dots, and the legend here would indicate that Washington Trust Bank would be represented by the red dots.
Q And does the map also show the location of other commercial banks in Spokane?
A Yes, it does, it shows all the commercial banks.
[817] Q And how are these shown?
A By various colored dots and represented by the legend up here (indicating).
Q Okay. Does the map show the banking offices of the National Bank of Commerce in Spokane County?
A Yes, it does, one at Medical Lake, one at Deer Park. They are represented by red stars on this map.
Q Does the map show the town of Cheney?
A Yes, it does.
[818] Q Now, directing your attention to the enlargement, a blowup of the attachment to the map, in the upper left-hand corner. What is that intended to be?
A It is a more detailed map of downtown Spokane, showing the commercial banking area.
Q And can you ascertain from that larger scale por-

tion of the map, the location of all commercial banks in downtown Spokane?

A Of the commercial banks?

Q All the commercial banks in downtown Spokane?

A Yes, I can.

Q And how would you determine that from the map?

A Well, the same colored dots represent the various banks on this particular section of the downtown area.

Q And is there a legend at the top of the map?

A There is a legend at the top of the county map.

Q Very well. Now, calling your attention to what has been marked as Defendants' Exhibit 11 for identification, I will ask you if you have made an effort to determine the geographical area from which Washington Trust Bank derives most of its business?

A Yes, we have.

Q And would you tell us just generally what is that area?

A It is defined on this map. Basically the way we went about it, we broke all of our accounts down by zip code, [819] and this represents the area that we consider our trade area.

Q And does that include everything within the corporate limits of the City of Spokane?

A Yes, it does.

Q And does it include any areas outside Spokane?

A Yes, it does.

Q And would you just tell us where, and point them out on the map?

A Well, to the west of Spokane would be an area about a mile or so, and to the south of the area about a mile or so, and to the north would include an area of a couple of miles, and it extends into the Spokane Valley out past and through the Opportunity area.

Q And is the Spokane Valley in an easterly direction from downtown Spokane?

A Yes, it is.

Q About how far would it be out to Opportunity?

A About six to eight miles.

MR. MOEN: All right, you may resume the witness chair.

I will offer into evidence both Exhibits 10 and 11 for identification.

MR. TORRE: A point of information, is that the location of the bank, currently as of today?

[820] MR. MOEN: I'm sure it is.

THE WITNESS: Yes, it is.

MR. TORRE: And is that the Spokane metropolitan area as we have stipulated?

MR. MOEN: That is the area shown on Exhibit No. 11, that is the exact same map as contained in the pretrial order.

MR. TORRE: No objection.

THE COURT: All right, they will be admitted, both of them.

(Defendants' Exhibits Nos. 10 and 11 for identification were received into evidence.)

MR. MOEN: Mr. Stanton, what portion of your bank deposits come from the area shown on Defendants' Exhibit No. 10?

THE WITNESS: In relation to the number of deposits, about 90 percent of our deposits numberwise come from that area—relating to dollar amounts about 85 percent come from the area.

Q And what portion of your demand deposits come from this area.

A Approximately the same, I think it is about 89 percent in relation to the number or 85.

Q What portion of your loans come from that area?

[821] A Well, it ranges between 80 and 85 to 90 percent.

Q What portion of your loans represent real estate loans?

A What percent of our loans—relatively a small portion of our loans, Mr. Moen. It would be four or five million dollars, and it would be about six or seven percent of our total loans.

Q And how about your commercial loans?

A That would represent the vast majority. It would be about 75 to 80 percent of our loans.

Q And your individual installment loans?

A Well, ten to 15 percent I would estimate.

Q Is there any significant part of your banking business received from the area of Spokane County, outside of the Spokane City Limits?

A About three to four percent of the total deposits would be out of that area—

Q Now, Mr. Stanton, what in your opinion are the advantages to Washington Trust Bank from the proposed merger with the National Bank of Commerce?

A Well, I suppose I've been asked this question why we want to merge many, many times and I'd like to answer it in the following manner: If I could, Mr. Moen, I would say that from the standpoint of the Washington Trust Bank that our bank should be competitive in the Spokane market and my policy has been—we should [822] render the best possible banking services we can to our customers and potential customers. And I have also a very strong feeling that it could provide advanced employment opportunities for our employees. And third I think it is my financial responsibility to provide a return for my stockholders.

Q Do you feel at the present time that you are unable to adequately serve your customers?

A Yes, I do, and I think there are severe limitations that have been placed on us, there were, rather, up to the present time and—

Q Is there any particular basic reason why Washington Trust Bank can't adequately serve the customers?

A Well, as I look at it I think that the basic problem that we seem to be finding more and more as times change, is that because of our size, because of our lack of resources, we are unable to compete for some quite substantial business. It's been our history that whenever we're able to, and as a matter of fact I think we've been successful in a number of areas in nurturing small businesses into very large and successful businesses and they have become large, if they don't sell out or merge with somebody else, they exceed our capabilities and it is a little frustrating in my mind having worked all of these years with these people to [823] all of a sudden come to the end of the road when you can't really service their needs adequately.

Because of that lack of size there are a number of areas of expertise that we haven't been able to get into. We haven't developed people in these specialized areas—we just haven't been able to do that.

[824] Q Now, would that merger with the National Bank of Commerce cure or help cure these problems?

A I've thought about that for many, many years and I definitely feel that it will.

Q What is the loan limit of Washington Trust Bank?

A Well, our legal loan limit is 15% of our capital and surplus account, which is $1,275,000 at this time, but for all practical purposes our house limit, so to speak, is about a million dollars and we don't feel comfortable going much past that.

Q Would you explain the reason for that?

A Well, we just had an example for that, in Spokane a customer was remodeling a very substantial plant and our first commitment to him we thought would suffice, about pretty close to $900,000, but as he got into it his costs exceeded that figure and we naturally had to continue with the man, we couldn't abandon him in the middle of the stream, so we are now up to about $1,200,000 in total outstanding loans to the firm. And also important to us, well, it is important to us because of that factor, to maintain some leeway.

Q Would it be fair to say that although your legal loan limit is one and a quarter million dollars, that your practical and operating loan limit might be a million dollars?

A That's the policy we've adopted, that's correct.

[825] Q Do you know what the loan limit is of the National Bank of Commerce?

A Approximately seven and a half million dollars.

Q And do you know what the loan limit would be after the merger?

A At least that.

Q Is there a need in the Spokane market for any type of a loan which Washington Trust Bank is unable to make or is not making?

A Well, I think there are a number of areas that we would like to be more competitive in and because of our

limited resources we have never been able to become a factor.

Q Will you tell us what they are?

A Well, specifically I think one of the more important ones is the agricultural area. Being located strictly in Spokane and with one branch out at Opportunity, we really are not in a position to go out and solicit that agricultural business. Those agricultural accounts that we do have come into Spokane specifically and we are not able to get out, and as a result we have very little agricultural credit and I do know, as a matter of fact, that the National Bank of Commerce is one of the leading banks in the United States in the granting of agricultural credit.

Q May I ask you, for the record, what you mean by agricultural [826] loans—does that refer to capital loans for the purpose of farms or does it refer to the operating money needed to run the farm?

A I think it could be both.

Q And does Washington Trust Bank make either of these types of loans?

A We make very limited number of these types of loans, yes.

Q Do you feel there is a need for this type of loan in Spokane County?

A I think Spokane depends very heavily on the agricultural area and we really are not a factor in that.

Q Are there other types of loans other than agricultural?

A Yes, there are. We have an area that, simply because of our size, we have never been a factor in—mining loans. Over the years the mining industry in the area and in the Coeur d'Alene area especially have produced a lot of dollars in the Spokane area and we have had no money in this business whatsoever and never been able to. We have called on people but we are just not in a position to service that area.

Another area that is important to me too is the residential real estate area. It is highly important that we, as a supposedly full service bank, should be servicing all of the residential mortgage requests that are made of us. We are not able to do that because we [827] don't have sufficient funds.

Q Does the Washington Trust Bank make any mining loans at the present time?

A No, we don't.

Q Does Washington Trust Bank make any residential loans at the present time?

A Yes, we make a few, but very few, and we are just competitive in the residential market. In the residential market you have to deal through the builders and that type of thing and they need some substantial amounts of credit, they need it on a continuing basis, and we just have never had the funds to be competitive there.

Q Is there a need for this type of loan in the Spokane area?

A Definitely I feel there is.

Q And if the merger is approved you feel that that need will be supplied?

A Well, I have become familiar with the position of the National Bank of Commerce as it pertains to this area and they are very, very strong residential lenders, and in my opinion, very competitive.

Q Are there other types of loans that you can think about?

A Specialized loans, some term capital loans for example that enable businesses—here again we haven't been much of a factor in this area. We have just never had the amount of capital available to have a factor here.

[828] Q How about industrial loans, do you make those?

A On a limited basis.

Q And do your competitors make these various types of loans?

A Yes, they do.

Q How about Turnkey loans, do you make them?

THE COURT: What kind?

MR. MOEN: Turnkey loans?

THE COURT: What is that?

THE WITNESS: As I understand Turnkey loans, your Honor, it is a situation where a project is brought to completion and it is turned over to the ultimate owner in one package. We have no expertise in this, no knowledge of that area and I am lacking in that type of thing.

Q (By Mr. Moen) Do these type of loans that we talked about require expertise or specialized personnel?
A Very definitely, they are highly technical and—
Q Does Commerce have that personnel?
A Yes, they do.
Q And what is the reason Washington Trust Bank can't go out and hire this personnel?
A Well, probably we could go out and hire the personnel but first and foremost we don't have sufficient funds to really be a factor in the market and it would be extremely expensive to bring that type of person into the bank. I'm not sure we don't have too many high paid guys right [829] now.
THE COURT: He said "I'm sure we don't have too many high paid guys right now," that's what he said.
In other words, the salary range isn't as high as it is in some other institutions, is that right?
THE WITNESS: Just the opposite, your Honor, and if I could just spend a minute, I think I've got three or four highly competent young fellows that I brought into the bank and I'm very proud of them, they are doing a wonderful job. But in order to get that type of person you have to pay competitive salaries and the salaries I am paying some of these fellows are competitive. It's very expensive.
Q (By Mr. Moen) Mr. Stanton, in addition to entering the new loan areas, there are services to customers in which you think Washington Trust Bank is deficient?
A Yes, there are, Mr. Moen, there are a number of areas that I have been concerned about over a period of time. The Trust Department, for example. Our Trust Department competes in the City of Spokane but we can't compete, for example, we have some business in the corporate transfer areas, for example, or corporate registrar areas, and we are lacking and we have had an awful hard time developing investment advisory services in that particular department. It's awfully hard for us to develop that.
[830] Going further, the international banking area is one that is becoming more and more prevalent and we found in recent years that more and more customers are

trying to explore this particular area, international markets, and we just don't have the expertise to be helpful to them at this time.

[831] Q Now, do your competitors offer these services?

A Yes, they do.

Q And are you at a competitive disadvantage as long as you're unable to offer them?

A I feel that we are.

Q And do you feel that there is a demand in Spokane for all of these services?

A I know there is.

Q Do you think that the National Bank of Commerce can service those areas?

A Over the period of time that I have become more closely acquainted with the National Bank of Commerce, I feel they could be very helpful in these areas.

Q Do you feel that these various areas of services that you mentioned requires specialized personnel?

A Very definitely.

Q And does Commerce have that specialized personnel?

A I believe they do.

Q And will it be made available to the Spokane market if the merger is approved?

A Yes, it will be.

Q Do you feel that if the merger is approved that you will be able to more effectively compete in the Spokane banking market?

A Yes, I do.

[832] Q Are there any areas of service which you may be forced to discontinue if you have to continue on as an independent unit bank?

A Well, there's an area that concerns me quite a bit right now and that is the credit card service. We've operated the credit card for a little over four years and we continue to run in the black, in the red, every year. It's been a loss item for us ever since we started and I'm concerned about the future. It seems to me that that is a market that we are trying to serve in the City of Spokane. We can go so far, we can only develop so much in outstandings, and we can only develop so many card holders in the particular area, and at this point I am not

sure how much more we can develop or whether it is at all possible for us to ever break into the black in it.

Q Does the Washington Trust Bank have customers which they have been unable to service because of the inadequate loan limit?

A Yes, we do.

Q And how do you service customers who need money in excess of your loan limit?

A Well, I think there are several ways. We try and counsel with them to see needs are really as great as they think they are, and if after we determine that they really are, [833] if their credit needs are reasonably small in excess of our limits, we have been successful in placing limited amounts in overlines, but it has proven to be fairly unsatisfactory as far as I'm concerned.

Q Is that a satisfactory way to service your customers?

A No.

Q And will you tell the Court why?

A I think there are a number of reasons. A customer that we are familiar with, we build up this knowledge of that customer over a period of time and we then have to, in order to arrange these overlines, we have to go to another bank and start through the whole process again. We know the customer and yet we have to prove to the other banks that the customer is worth these amounts of money and it's a little hard to educate some of these fellows when they're living 300 or 400 miles away. Frankly that type of credit has had its ups and downs and in this period sometimes we've had a terrible time to try and arrange these overlines.

I was told by one of our correspondents in New York for example that we had reached our allowable credit and we couldn't call on them for any more. That's a pretty frustrating area—place to be in, frankly.

Q Does this put the customer in touch with the participant [834] in the loan?

A Yes, it does. The customer then becomes—all of his records and files are part of their bank's files too.

Q Is that an undesirable thing from the standpoint of Washington Trust Bank?

A We've been a little concerned about it, we don't like to have everybody knowing about our customers.

Q Does it jeopardize your position in holding the customers?

A Yes, I think it does.

Q Could you give us some idea of how many customers you have been unable to service because of inadequate loan limits?

A In the recent years?

Q Yes.

A I think probably "unable to service," I would say not only the present customers that—well, there's three areas that concern me. And that is the present customer where you're getting into a situation where he is bumping our limits; and the customer who just leaves us, he merges and gets into a situation where his credit needs are far in excess of our limits and we don't usually have a chance to work at that; and the area that also concerns me is our inability to seek new customers in certain areas.

Q Have you made any recent loans in which you've had to [835] have participation?

A Yes, we have.

Q How many would you say in the past year?

A Oh, two or three.

Q If the merger were approved would this substantially reduce the necessity of loan participation?

A I think in every case.

MR. TORRE: Your Honor, could we limit the leading just a little bit?

THE COURT: Well he asked if he had it and he said "Yes".

MR. TORRE: Well, it sounds leading to me is why I made the objection.

THE COURT: Apparently it didn't to me and of course I win, it's overruled, go ahead.

MR. MOEN: And with the approval of the merger would you be able to pick up new customers?

A Yes, very definitely.

Q Now, Mr. Stanton, turning your attention to branching, by Washington Trust Bank, I'll ask you when did Washington Trust Bank first establish a branch bank?

A Our first bank was established in Spokane in 1950.

Q And when was the Washington Trust Bank originally organized?

A 1902.

[836] Q How many branches do you have at the present time?

A Well, we have seven branches and the main office, a total of eight offices.

Q How many of these branches are within the corporate limits of Spokane?

A Six of the branches are.

Q And where is the seventh one?

A The seventh one is located in Opportunity, Washington.

Q How are these branches established?

A Well, we've established these branches de novo.

Q Have you acquired any of these branches by acquiring other banks?

A No, we have not.

Q Has Washington Trust Bank ever been a party to a merger with an existing bank?

A We have not, no.

Q Have you considered further branches in Spokane City or in Spokane County?

A Yes, we have.

Q Do you think Washington Trust Bank could solve its size problems by further branching in Spokane?

A I don't believe so.

Q Could it solve its size problems by branching outside of the county?

A I don't believe so.

[837] Q Have you considered expanding your operations by acquiring or merging with another bank other than the National Bank of Commerce?

A Yes, we have. We have had very limited discussions on very infrequent occasions as to what might be possible for us.

Q Do you think there is a reasonable likelihood this is in the foreseeable future?

A We have concluded that it is not.

Q The Department of Justice has suggested Washington Trust Bank join other independent banks in Washington and form a new regional or statewide bank and I will ask, in your opinion, do you think that that is a practical possibility?

A I do not.

Q Would you tell us why not?

A I think there are a number of reasons why not. In the first place we compete in the City of Spokane and we've got our hands pretty full right now, there's some pretty good sized financial institutions we compete with now. Not only the commercial banks but the mutual savings banks are very, very substantial and the savings and loans in the City of Spokane are very substantial and we feel do compete and as a result of that we've never had the time to really develop the [838] number of people that would be required to go out into those areas. We've taken the position that at this point that for us to go out we'd have to have people very, very knowledgeable in operating branch banks and we'd have to have people knowledgeable in various areas that we went into and we just do not have the capability unfortunately. In addition to that, as I understand it, most of the banks are not willing to sell for cash, they want stock transfer and the stock in our institution is very closely held and there's no market for it and I'm not sure who would want the stock.

Going past that, some of the premiums that I have heard being asked by banks throughout the state are very substantial and would require considerable amount of dilution on the part of our stockholders to meet that and frankly I don't see any incentive for us to go out and do that.

Q Do you think you have sufficient capital to expand on any meaningful basis?

A I don't believe so.

Q How would the premiums you mentioned affect your own holdings?

A Well, my family holdings amount to approximately 60 percent of the outstanding stock in the bank. It seems to me that any dilution of that would be quite [839] substantial in acquiring some of these other banks.

Q Do you think your stock would be attractive to a small country bank?

A I've indicated, Mr. Moen, that there's no market for stock and I can't imagine anybody really wanting it.

Q Do you have anybody in your organization who has experience in managing a system of branch banks?

A We operate our branch system on a little bit different basis than most banks do. We have concentrated for most intents and purposes our operating procedures, our proof operations, our bookkeeping operations are all consolidated in our main office and we are in very close contact, not only by telephone but by this pickups and picking items between branches and the main office so that we really operate our branches on a very limited basis. As a result of that I think it would be awfully hard for us to step out any great distance to operate new branches.

Q Have you been approached by anyone seeking Washington Trust Bank to join in a regional statewide group of banks?

A I have not other than the present merger.

Q Do you have any plans or programs looking to that kind of result in the event this merger is disapproved?

A I do not.

[840] Q Now, Mr. Stanton, are you familiar with the economic base of Wenatchee, just in a general way?

A Just generally.

Q And is Wenatchee oriented to Spokane for its financial and banking needs?

A No, it is not.

Q What city would you say Wenatchee is oriented to?

A It's my understanding Seattle is the primary area for Wenatchee.

Q Would the same be true of Cashmere?

A Yes.

Q How about Ellensburg?

A Yes, I think Seattle is the prime area.

Q Does Ellensburg look to Spokane for any of its banking needs?

A I don't believe so.

Q To what city would you say Ellensburg was oriented?

A Seattle.

Q How about Yakima?

A Yes, I think—well, Seattle definitely is the prime area, but I think also Portland has become a factor in Yakima's area.

Q Would you consider it within the trade area of Spokane?

A Yakima to be?

Q Yes.

[841] A No, I don't.

Q How about Walla Walla?

A No, I don't even consider Walla Walla to be in the Spokane trade area.

Q Prior to working out this proposed merger with Commerce, were any of your banking policies or practices influenced or affected by the knowledge or belief that Commerce might some day enter the Spokane market in competition with Washington Trust?

A No, I don't believe so.

Q Would that possibly affect any of your day-to-day decisions?

A It certainly hasn't.

Q Any of your banking policies or practices?

A No.

Q How about the other Spokane banks, do you think they are influenced by this possibility?

A I have no idea, but I would very much doubt it.

THE COURT: Do you want to make an objection?

MR. TORRE: I would like to object, I don't see how he knows. It would be hearsay on his part.

THE COURT: It would be just a question of weight. He can answer, he is in the Spokane banking business.

Q (By Mr. Moen) How long did you tell us you had been [842] in the banking business in Spokane?

THE WITNESS: Over 20 years.

THE COURT: He said 1952. Is that correct?

THE WITNESS: That's correct.

Q (By Mr. Moen) Does that give you some familiarity with the banking market in Spokane?

A I think it does.

THE COURT: It is just a question of weight.

MR. TORRE: That's why we were kind of slow on the trigger.

Q (By Mr. Moen) Can you think of any way that this merger, if consummated, is going to decrease or lessen competition in the Spokane market?

A I do not.

Q Or in Spokane County?

A No.

Q Or in the State of Washington?

A No.

Q Or in any part of Eastern Washington?

A No, I do not.

Q Do you consider Spokane to be a competitive banking market?

A I have considered it to be a competitive market, but I don't—I still don't understand this "rival" business. But no matter what, it is still darned competitive.

[843] Q And do you get competition from the mutual savings banks?

A Very definitely.

Q And do they compete?

A I think they are very substantial competitors in Spokane, Mr. Moen. Let me just say that Washington Mutual Savings Bank, which is a million-dollar savings bank, has three offices in the area, and Fidelity Mutual Savings Bank, which is the second largest mutual bank in the State of Washington, has its headquarters in Spokane, and a very substantial headquarters. Lincoln First Federal Savings, Mr. Linsey is a darned good competitor, he has been for a good number of years.

Q Did you say Washington Mutual Savings Bank was a million-dollar bank?

A Billion dollars, I am sorry, billion dollars.

Q A billion-dollar bank?

A Yes.

Q Do they compete with you for deposits?

A Yes, they do.

Q And for some types of loans?

A They are getting into installment loans, household type loans, and they also compete very substantially in the mortgage area although we do not do much of that. They are very strong competitors in the real estate mortgage market.

[844] Q How about for desirable bank sites, do they compete for those?

A Well, that's another area where they have some advantages that concern me. They can branch in an unlimited manner in any place in the state, is my understanding.

Q Do you mean branch de novo?

A That's correct.

Q And credit unions, do they offer you any competition?

A Yes, they do.

Q Do you expect this competition to continue after the merger?

A Yes, I do.

Q And do you think the merger, all factors considered, is pro-competitive?

A Very definitely.

Q Do you expect the merger to have a significant impact and effect on the Spokane market?

A I am hopeful it will.

Q And on the level of competition in the market?

A Yes.

Q Will it increase or decrease?

A It will definitely—the level of competition will increase.

MR. MOEN: You may cross-examine.

[845] THE COURT: All right, this is an appropriate time to take the recess. It is 12:00 o'clock, so we will recess until 1:30.

(Morning Recess)

[846] AFTERNOON SESSION

PHILIP STANTON,

resumed the stand.

BY MR. HARTMAN:

Q Mr. Stanton, Mr. Howard suggested in his testimony that Washington Trust makes or has made bids on local municipal bond issues, and I would like to clear that up. Do you presently make such bids?

A No, we have not.
Q And in the past have you made such bids?
A I think a number of years, some 20-odd years ago we might have but we haven't in recent years.
Q And have you acted as a pipeline for other banks, a messenger boy, so to speak?
A Yes, very seldom but once in a while a bank will send a bid, and we will carry it over.
Q But your bank was not financially involved in it?
A No.
MR. HARTMAN: Thank you. That is all I have.
THE COURT: All right, Mr. Torre.

CROSS-EXAMINATION

BY MR. TORRE:

Q Mr. Stanton, is Quincy, Washington in the Spokane trade area?
A Quincy?
[847] Q Yes.
A I don't believe so, no.
Q Is Othello, Washington in the Spokane trade area?
A No. Maybe for certain items but it would be marginal.
Q Pend Orielle?
A You're getting closer.
Q Is Pullman?
A I think so. I think Pullman would be, yes.
Q Is Newport?
A To some extent.
Q Is Ephrata?
A I don't believe so.
Q Mr. Stanton, before you is Government Exhibit C, which is your bank's letter of protest to the chartering of the American Commercial Bank in 1965. Do you recognize that document?
A I am sorry, I was open to another page. What was it again?
Q Well, I would like to direct your attention specifically to Exhibit E of that document, which is one of the pages further on in there. You will notice that there

is a listing of banks on the lefthand side of that page, and the year that they were merged or consolidated, and the bank with which they were merged or consolidated. Certain of those banks have asterisks next to their names, the asterisks indicate [848] that the banks are in Spokane, and the immediate trade area. Would you say from looking at this document that most of those cities that are so marked are within the Spokane trade area, including Ephrata, Quincy, Odessa, and those other places?

MR. MOEN: Your Honor, I think the question should be limited to the time the exhibit was made. I notice at the top of the page they are talking about 1950.

MR. TORRE: Well, it says "since 1950".

THE COURT: Well, go ahead.

A No, I don't believe that these all qualify today. A good number of economic changes have come about, particularly in the Tri-Cities area, where they have become a very significant area in and of themselves.

Q Well, the Tri-Cities is not marked with an asterisk. The Tri-Cities National Bank, third from the bottom, you didn't designate that as being in the—

A No, but my point is that that has become a center in and of itself to some extent, and these areas, Quincy and those areas, would look to perhaps the Tri-Cities area more than they do our area.

Q Is the Washington Trust Bank a correspondent bank to the Security State Bank in Ephrata?

A That is correct, we have an account from them. [849] Q And because of that correspondent relationship you have acquired therefore a knowledge of some of their business in the area, is that correct?

A A very limited knowledge, but we do have some, yes.

Q With regard to the Bank of Pullman, did your bank help establish that bank, did your offices participate in its establishment?

A We were requested by,—one of our officers, a Mr. McLaughlan, was requested by a group of business people in Pullman, Washington to form a new bank, and Mr. McLaughlan came to me and asked my opinion,

and I told him that I thought it was perfectly proper for him to go ahead and work with the local people in Pullman to start that bank. As a matter of fact, we put on our payroll and helped train a man who eventually went down to run that bank. He was on our payroll for something like three, four, five months, something like that.

[850] Q Did you help place some of the stock in that bank?

A I did not.

Q I have before me Exhibit No. 4, which is the deposition of—I am sorry, Exhibit No. I-4A and I direct your attention to the last paragraph of that exhibit and Exhibit No. I-4B over on the next page.

THE COURT: What do you call that?

MR. TORRE: The bottom paragraph of I-4A and the entire document of I-4B. Mr. Stanton, do you recall that meeting with Mr. Faragher in Seattle on June the 30th, 1970?

A I don't recall being specifically in Seattle on that day. I do recall talking with Mr. Faragher several times.

Q Now, would you say that the statements contained in that document are probably accurate?

A No, I don't believe so.

Q Do you think he was mistaken when he wrote those down?

A I have no idea what he thought at that time. For example, let me point out that he said they were active in it and McLaughlan was assisting them at Phil's request. I did not request Mr. McLaughlan to start the bank, he was invited to start by a group of local businessmen and I gave him my permission to go ahead on his own.

Q Did you acquiesce in his activities?

[851] A I think I just said that.

Q Did you make bank stock loans to stockholders of the bank?

A We have one stock loan through an investor in that bank.

Q What percentage of the stock does that stockholder hold?

A I don't recall what it is, the gentleman is an attorney in Spokane by the name of Mr. Lukins.

Q Would that perhaps be maybe 30 percent of the stock in that bank?

A I don't believe it is that high.

Q Would there have been perhaps another stock loan?

A Not to my knowledge.

Q That you don't recall?

A Not to my knowledge.

Q You mentioned that you have had trouble in the agricultural lending areas, that you can't get out to the farmer, is that right? Isn't it true that most of the top officers of the bank in most of the branches are supplied with automobiles by the bank?

A Yes, we make automobiles available to them.

Q And they are free to drive them out to solicit business from farmers if they want to?

A They've got their hands full right around the local areas where they are located.

Q But they could go and service the farm business I [852] suppose if they wanted to?

A I would imagine they could, sure.

Q Have you ever made any effort to hire an agricultural field man?

A No, we have not.

Q I direct your attention, Mr. Stanton, to Government's Exhibit No. A-59 and to the Washington Trust Bank line on that exhibit that indicates the distribution of the commercial industrial loans held by the banking organizations in the Spokane metropolitan area—you mentioned that you had difficulty in the commercial lending area, I believe, is that true?

A I don't believe I said in the commercial lending area, which would be one of our strongest areas. Our difficulties, I testified earlier, relates basically to the size and expertise in a lot of the very specialized areas.

Q But from the numbers indicated on that exhibit between 1966 where you had a low of 20.6 million dollars

in commercial industrial loans to the level of 37.3 and you increased your share of those loans in Spokane metropolitan area from 18.42 to 20.1 percent. You've done rather well in that area even though your expertise wasn't, isn't that right?

A Well, it seems to me we probably kept pace with the [853] market but we probably have not made any great shakes as far as that's concerned.

Q You certainly haven't fallen behind?

A No, thank the Lord.

THE REPORTER: I didn't get that last question.

MR. TORRE: Yes, you certainly haven't fallen behind?

A No.

Q I direct your attention to Exhibit A-64 from there on and that exhibit shows the growth in absolute terms from 1966 to 1970 in commercial and industrial loans. And of the three largest banks in Spokane it shows that the Washington Trust Bank had the greatest growth in commercial and industrial lending. You said that you more than kept pace with the market, in fact led?

A The figures are interesting to me because it is sort of like Avis because I think we've tried harder than the rest. But from the absolute figures I don't think we've made very much of an impact on Spokane, frankly.

Q I direct your attention to Exhibit A-58 which shows total loans of your bank—is it true that twice during the past five years your bank has increased its lending by transferring funds into capital account areas from surplus areas?

A Since when?

[854] Q Well actually the dates around January 26, 1968—$500,000 was transferred from retained earnings and surplus thereby increasing your loan limits from 750,000 to 800,000. Then January 24th, 1969 the same action was taken increasing the earned surplus by half a million dollars by transferring retained earnings increasing the legal limit to $850,000 and on March the 25th, 1969 the legal lending limit of the Washington Trust Bank was increased to $1,275,000 because of changes in

the state banking law. I am reading from Washington Trust Bank answer to plaintiff's interrogatory No. 35?

A I don't recall those dates but very definitely we did add to our capital accounts so that we could increase our lending limits. Then of course the state changed its requirements so that instead of a ten percent capital surplus you had 15 percent capital surplus.

[855] Q So as your bank's income was increasing as you were becoming more profitable, you were able to increase your loan limits, is that correct?

A I believe we continued to make a profit, and as we go along we feel that it is appropriate to transfer these funds into that account. We would like to increase our lending limit ten times that much if we possibly could.

Q So therefore, as your bank's income increases, as your bank becomes more profitable, makes more money and begins taking in more deposits, you are able to increase your lending limits by such transfer of funds?

A Yes, we have had a very modest increase in our income.

Q But I asked you whether or not you could do that as you grow; I know you had modest increases—

A The law permits me to do that, that's right

Q So that would be a way of taking care of some of these customers that might be bumping, as you say, your lending limit?

A Well, over a period of how long have we been doing this? About five years? We have increased it $100,000 in our lending limit, and all of a sudden the State made the change that was fortunate.

Q I don't know what you did before 1967, but the question that was asked in the interrogatories—

A In other words, in five years we increased it twice.

[856] Q That's right, and then the State increased it a third time.

A That's right. At that rate it would probably take me about fifty years, wouldn't it, to increase substantially, double my limits?

Q Were you in the courtroom when Mr.—the gentleman from Potlatch, Idaho, I forget his name, testified—

A Mr. Bennett?

Q Yes, Mr. Bennett.

A Yes, I have been in the courtroom.

Q And you were able to service his loan from Spokane, is that right?

A Mr. Bennett comes to Spokane and uses our facilities in Spokane.

Q Did you ever go out and examine his facilities?

A Yes, I was down there to Mr. Bennett's property about three years ago.

Q How about other officers of the bank, do they keep a little closer tab on Mr. Bennett?

A I am not sure, I think our senior loan officer was there perhaps a year or so ago.

Q Have you ever considered making a secondary offering of the stock of Washington Trust Bank?

A No, I have not.

Q Does the Washington Mutual Savings Bank make unsecured commercial loans?

[857] A Their lending authority now has extended to installment loans relating to household items, and I believe they can also loan on trailers and automobiles.

Q Do they make business loans to retail or wholesale or manufacturing businesses?

A I don't believe so.

Q You mentioned that your lack of resources prevented you from adding new services that you felt were necessary?

A Well, I think that's just one of the reasons.

Q I notice that in your bank's Answer to plaintiff's Interrogatory 9, that since 1967, it was asked, what new services your bank considered offering and whether it was added or was not added and which ones were not added, and 27 different services were listed. Of the 27, your bank added 23 and had not added four. Apparently you had no—did not consider adding international banking services because that wasn't even mentioned, so apparently you haven't considered international banking services as a possible source of revenue?

A Certainly we considered it over a period of time, but it is so far from reality under our circumstances that it is not even worth considering, really.

Q But the answer would indicate that it is—in this interrogatory that you didn't even consider it over the last five years or six years?

[858] A We thought about it, but whether we actually sat down and discussed it at any length, I am not sure.

MR. TORRE: At this time I would move into evidence Defendants' Answer to Plaintiff's Interrogatory No. 9 as a rebuttal exhibit.

THE COURT: What does it say?

MR. TORRE: Well, it shows, your Honor, that they considered twenty-seven different services over this five-year period to their bank, and of the twenty-seven they added twenty-three servics, and it also shows—

THE COURT: I mean what does that rebut? You see, for rebuttal purposes, for direct evidence in rebuttal, maybe it's admissible in evidence.

MR. TORRE: He gave the impression in his testimony that his bank was rather debilitated and unable to expand services.

THE COURT: No, don't tell me that, Counsel, because that isn't what he said. He didn't say his bank was debilitated.

MR. TORRE: I thought that—

THE COURT: I didn't get that impression at all from his testimony. What he said was that in certain areas because of the size of his bank and the services, they were unable to compete. He didn't say the bank was on the downhill. I didn't understand him to say [859] that, anyhow; did you, Mr. Stanton?

THE WITNESS: That certainly wasn't my intention.

THE COURT: Debilitated is a harsh word; his bank is going along all right.

MR. TORRE: Perhaps it was a bit harsh.

THE COURT: That's right. The bank is going along all right, but he thinks if he had another facility and money available for loan. It would make him more competitive. That is what you are telling me, isn't that right?

THE WITNESS: That's right.

THE COURT: It may be admissible in evidence but not as rebuttal as such. I don't know what it rebuts he said. You can put it in, I will admit it, but I don't know what it rebuts. What does it rebut?

MR. TORRE: That's all right, your Honor, I won't debate it.

THE COURT: When you talk about rebuttal, that

means, in my judgment, that you are impeaching his testimony by that document, and I don't know what it impeaches. It doesn't really do that.

MR. TORRE: I would say we are rounding it out a little.

THE COURT: Okay, put it in. It is in. Any objection to it, Mr. Moen?

[860] MR. MOEN: I am just counting the numbers, I want to check something here.

THE COURT: All right, you can redirect him on it if you wish, but I will let it in.

All right, go ahead.

[861] MR. TORRE: I have no more questions, your Honor.

THE COURT: Do you want to ask about that exhibit, Mr. Moen?

REDIRECT EXAMINATION

BY MR. MOEN:

Q Do you have that exhibit before you?

A No, I don't.

THE COURT: Is there another copy of it?

MR. TORRE: No, your Honor, I am sorry, we do not have another copy.

THE COURT: All right, Mr. Moen, show it to him and let him look at it.

Q (By Mr. Moen) Would you look at that exhibit and tell me whether it shows the extent of the service rendered in the particular item it is talking about?

A I am sorry, this is the National Bank of Commerce.

Q Well, the first part of it is the National Bank of Commerce. All that says is that you added a service, isn't it?

A That is right. I am not sure what page we are starting on, Mr. Moen. Is this page 1 of Interrogatory 9?

THE COURT: Hand it back to Mr. Moen and he can come up and point it out to him. Point out to him [862] what you are directing his attention to.

Q Does this show the extent of the services which you added?

A Yes, the services are all familiar to me and have been discussed in some depth by officers in our bank and

a considerable amount of time was spent in discussing whether to proceed with these services. The first one, for instance, is change of banking hours. That's a new service as far as we were concerned. Seattle-First offered, and the Old National offered, and the First National Bank offered, and the Pacific National Bank offered, and we felt that we probably had better meet the same kind of schedule, so we offered the same thing, too.

Q Can you effectively compete with your competitors in all those services listed there?

A No. Here is one, for instance, the Food Stamp program. We entered into it on a limited basis and we phased it out because we couldn't service the demand adequately, it didn't work.

Q Are there any other items on that list you want to comment about?

A Well, here is an overdraft loan program, a check guarantee card feature. That relates to the Master-Charge account. We decided not to provide that because we didn't feel we could generate enough in outstandings [863] at the present time to warrant going into it. It is an expensive program, we have to send out a lot of material to your card holders, you have to advertise the service, and we didn't feel that we could generate enough.

THE COURT: That is an intriguing subject, overdraft. What kind of a program is that?

THE WITNESS: Your Honor, under our credit card program, the fellow that invented credit cards decided that there were a lot of peripheral benefits to it, and one of them is, for example, if Mr. Moen had an account with my bank and—

THE COURT: Don't use him. Use Mr. X.

THE WITNESS: Okay. X has an account with my bank, and he also has a Master credit card with my bank. We set him up on an overdraft loan program so that when his checking account reaches a status that it might be overdrawn, we automatically charge his credit card accounts.

THE COURT: With his overdraft?

THE WITNESS: Well, we set it up in round amounts, to cover his overdraft.

THE COURT: I see. Go ahead. What happens is that he has an overdraft. Your credit card program actually extends him credit? That is, you make him a loan?

[864] THE WITNESS: We make him a loan, that is correct.

Q (By Mr. Moen) Mr. Stanton, I want to ask you a couple of questions about the bank in Pullman. Who is Mr. McLaughlan?

A Mr. McLaughlan is the vice-president of our bank.

Q Do you know how he got into the Pullman bank?

A Yes. As I testified, he was requested by a group of Pullman men in Pullman to start up a new bank.

Q Do you know whether there had been a previous effort by a group of Pullman people to form a new bank?

A He indicated to me that they had attempted to form a bank previously, but the request had been turned down, and they told Mr. McLaughlan this and he said, "Well, I think a charter could be gotten."

Q Does Mr. McLaughlan have any particular ties with the City of Pullman?

A Yes, he has been a long-time resident of the City of Pullman, his wife owns substantial properties in downtown Pullman, and he has very strong ties there.

Q Do you know how many stockholders they have in the Bank of Pullman?

A I have no idea.

Q You said you made a stock loan to Mr. Lukins, is that correct?

[865] A That is right.

Q Do you know how big the loan was?

A I don't recall, Mr. Moen, I believe it was about $35,000, thirty-five to forty thousand dollars.

Q And is Mr. Lukin's credit worthy of this kind of loan?

A Very definitely. He is a leading tax lawyer in the City of Spokane.

Q And did you charge him interest on that loan?

A Yes, we did.

Q And is it a reasonable interest rate, one that is favorable to Mr. Lukins, and also profitable to the Washington Trust Bank?

A Yes, very much so.

Q Were there any other stockholders in the Pullman bank to whom you loaned money?

A No.

MR. MOEN: That is all my redirect, your Honor.

THE COURT: Well, Mr. Lukins is a tax lawyer in Spokane.

THE WITNESS: That is correct.

THE COURT: Now that Mr. Butler has passed away, he is the leading one, isn't he?

THE WITNESS: I think he is a very good tax lawyer, your Honor.

THE COURT: I have had him in my court a number [866] of times, and know him well.

All right, is there anything further of Mr. Stanton?

Then you may step down, Mr. Stanton.

MR. MOEN: The defendants will call Mr. Faragher.

THE COURT: Mr. Moen, after Mr. Faragher, how many more witnesses do you have?

MR. MOEN: I think two, your Honor. I might say that I know that one of my witnesses will not be here today. I didn't think we would move along quite this fast. I asked him to come in on Tuesday.

THE COURT: When I first set the time for this case I kind of anticipated this, didn't I? I set the other case for Wednesday. I just knew that sort of thing would happen. Experience is a great teacher, and I am looking right at those young lawyers.

All right, go ahead.

[867] T. ROBERT FARAGHER,
called as a witness by and on behalf of defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MOEN:

Q Would you please state your name?

A. T. Robert Faragher.

Q And your residence address?

A 1320 Lexington Way East, Seattle, Washington.

Q How long have you lived in Seattle?

A I have lived in Seattle all of my life except for two years in New York, ten years in Tacoma, and four years in San Francisco, subtracted from sixty.

Q By whom are you employed?

A The National Bank of Commerce.

Q And in what capacity?

A I am the president and chief executive officer.

Q Will you tell us briefly your experience as a banker, and include any positions you may have held with other banks?

A I worked in a bank while I was going to school, but my first full time job was with the Guaranty Trust Company of New York in 1934, and I was there for two years. In 1936 I went to work for the Peoples National Bank of Washington in Seattle. I was there until 1951. [868] I was elected vice-president in 1947, and in 1951 I became vice-president and manager of the Bank of California in Tacoma. I was there until 1962, when I went to San Francisco as senior vice-president of the bank, and in 1965 I was elected executive vice-president of the National Bank of Commerce, and returned to Seattle. In January of 1971 I became president of the National Bank of Commerce.

Q Now as president of Commerce, what are your duties?

A Well, my duties are not specified in detail. They are the kind of duties that usually fall to the lot of the president and chief-executive of a corporation. I am responsible for the direction of its activities as laid down under the policies of the Board.

Q And are you the chief executive officer of the bank?

A Yes, I am.

Q And as such do you have personal knowledge of the management, operation, and resources of the bank?

A In a general way, yes.

Q And are you also familiar with the operations and resources of the Washington Trust Bank?

A Yes, I am.

Q And with the banking business generally throughout the State of Washington?

A Yes, I am.

[869] Q Does Commerce offer its services on a statewide basis?

A Well, we try to, Mr. Moen, but we are unable to do so on a complete basis because we are not located in three of the four major cities in the State of Washington, which includes Spokane, Tacoma and Everett.

Q Those are the three major markets in which you presently do not have offices?

A That is correct.

Q In how many counties in the state does Commerce have an office?

A I think we are in twenty-nine of the thirty-nine counties.

Q Mr. Faragher, if this merger were disapproved do you think Commerce would attempt to enter Spokane in one of the manners suggested by the Antitrust Division?

MR. VERVEER: Objection, your Honor. That question is speculative in the same vein as the question I put to Mr. Carlson Friday afternoon.

THE COURT: Oh, I think it is a speculative question, counsel. You claim they will and you don't want him to say no, I guess, isn't that about the size of it?

MR. VERVEER: Yes, your Honor, that may be the size of it, just as Mr. Moen didn't want Mr. Carlson to say yes last Friday afternoon.

THE COURT: Well, I don't recall what he [870] wanted him to say, but I will sustain your objection as to whether or not, and I will make that decision just based on other factors. All right, go ahead. Actually, it would be a self-serving statement anyhow.

Q (By Mr. Moen) Mr. Faragher, if the merger were disapproved, do you think it would be feasible to enter the Spokane market?

A No, I do not.

THE COURT: That is a better way of approaching it.

MR. MOEN: I think it obviates the reason—

THE COURT: Well, that is right. You are entitled to ask him that.

Q (By Mr. Moen) Could the National Bank of Com-

merce enter the Spokane market by acquisition of the Farmers and Merchants Bank at Rockford?

A We could not get into the Spokane market, in my opinion, in that manner, no.

Q And will you tell the Court why?

A Well, the Farmers & Merchants Bank is located in Rockford, and with a branch in Opportunity, and one in Cheney, and from none of those locations would it be possible for us to serve the Spokane banking market.

[871] Q Assuming it were legal to do so, would it be feasible for Commerce to enter the Spokane market by de novo or foothold entry with a single office bank?

A I don't believe it would. The problems of entering a market of that size are so severe and the competition so keen that it would be impossible to make any kind of an entry into Spokane from a single office.

Q And would you give us some reasons why you think that couldn't be done, I mean on a profitable basis?

A Well, I think we would—in every venture that we would get into—we would weigh the possible costs or the indicated costs against the possible earnings, and the difficulty with a single de novo entry into a market of that kind is that we would be compelled to provide a banking facility and staff and services that would give us some ability to attract business in the market. We would have to have proper quarters that would house these people and attract the business to us.

We could not in any way go into that market with an office in a hotel, for example, and hope that we could grow from there with any—that we could grow seriously from that kind of a beginning. The costs, of course, in that kind of a development also are immediate, and whatever deposits you might expect to develop would come presumably slowly, and in my opinion, [872] over a period of time and would not be available to offset the costs at the time they are incurred.

I think that the experience of the Old National Bank when it purchased the Northwest Bank's two offices in Seattle leads me to—lends support to that statement that I have made. They have not become a factor in my opin-

ion in the Seattle market. Their acquisition of those two offices has not made any particular dent in the banking business in Seattle, and I think their experience has probably not been particularly satisfactory from their standpoint.

I think the example of the Pacific National Bank's entry into Spokane similarly would support my feeling that the single or small entry into a metropolitan city is not a proper or a satisfactory means for a bank of our size to make such a beginning.

Q Have you considered the Pacific National Bank of Washington to have any substantial impact on the Spokane banking market?

A No sir, I do not, and I think the deposit figures that have been entered into the Court's records would further support that.

THE COURT: Would you mind asking him a little more about the Old National coming into Seattle for the record? I know where they went, but somebody [873] who reads this record might not know.

Q (By Mr. Moen) When did the Old National Bank of Washington at Spokane branch into Seattle?

A Well, they acquired the Northwest Bank on September 28, 1970. At that time—or at least at the year end in 1970, the total deposits of those two offices that they acquired were $15,000,000.

Q How much are they today?

A The latest figures I have here are June 30, 1972, but they are $16,853,000.

Q How many branches do they have in Seattle?

A They have two branches, one at Third and Pine and one at Third and Columbia in Seattle.

It is rather interesting to look at the figures because the deposits of the branch at Third and Pine are practically identical to the total at the time they acquired it. The office at Third and Columbia is near the public buildings, the courthouse and so on, in Seattle, and it is interesting to see that the deposits of that branch changed from $861,000 in less than two years to $2,161,000. I would suspect that possibly some of those—some of that increase might be in public funds due to the location there. But I do not have specific knowledge of that fact.

Q Have you had specific experience with attempting to [874] run a one-office bank in a metropolitan community?

A Well, I have, Mr. Moen. As I have indicated, I spent from 1951 to 1962 in Tacoma, except for the first part of the first year, I was vice-president and manager of the Bank of California in Tacoma. It is a single-office situation located a block from the Courthouse on the main street in Tacoma, downtown Tacoma. That bank has been in Tacoma for 65 or 70 years, and it further was a result of a merger of two banks way back many, many years ago. But the significant part of it I think is that my recollection at the time I was here was of the difficulty of competing with the two other banks, two other large banks in Tacoma who not only had branches—not only had their head office on Pacific Avenue as I did but who were during that period that I mentioned beginning to expand their branching within the City of Tacoma. And I found it very difficult to compete with the Puget Sound and the National Bank of Washington who were putting branches not only out in some of the residential areas in the Tacoma banking market but also up on the side of the hill above the main downtown Tacoma streets. One was placed at Ninth and Commerce, I believe, which is two blocks up the hill, and one or two up on the side of the hill near the other Tacoma Courthouse.

[875] So this was something that was very difficult to compete against, and it to me illustrates the difficulty of competition in a single family—in a single unit banking office in a metropolitan area.

Q Has the bank had any experience in this area in the foreign department, in Hong Kong, for example?

A Yes, we have. I think the identical situation was illustrated to us where we first opened an office upstairs in a building in downtown Hong Kong but found that while you could make some loans, you could not attract any deposits, and the only way we could get a broadly based banking operation going was to spread out into the various districts of Hong Kong where we could compete with the Chinese banks and the other foreign banks there and attract deposits which we could then use in our banking operation.

I might say one further thing, Mr. Moen, about the Bank of California in Tacoma. As I recall, when I was here, the deposits were about $50,000,000, and I don't want to be held to that, but I think that is correct. In some of the statistics that the plaintiffs filed, I think they stated that the deposits of the Tacoma office of the Bank of California in June 1970 were $65,000,000 and in June 1972, they were $69,000,000. If I am correct in my assumption or my recollection [876] that the deposits in 1960 were about $50,000,000 and now they are $69,000,000, that's about a 40 percent increase over those ten years.

The National Bank of Commerce, which has more than one office, and I'm just using our figures by way of comparison, grew about 100 percent in that ten years. We used to compare the—for the purpose of allocating contributions in the City of Tacoma, we would each on each call date called by the Comptroller of the Currency, or the supervisor of banking for publication of figures, we would accumulate the deposit figures of the various branches in the—various branches in the market in the Tacoma banking market and then contributions, say, to the United Way or United Fund would be allocated on the basis of those deposits. I was able to get some figures for comparison between December 31, 1961 and October 10, 1972, which I think confirm my feeling that the—of the difficulty, if not the impossibility, of a bank even of large size and many, many years of existence here in Tacoma, of holding its own. And within that ten-year period, the percentage of the Bank of California's deposits in the Tacoma market decline from 20 percent to 14.8 percent.

Now, this confirms my feeling about the situation and the difficulty of competing in a [877] metropolitan area from a single office. I might say that my conversations with an officer of the Bank of California in Tacoma confirmed that opinion that I have had or the recollection that I have had with my experience, and he made a statement to me something to the effect that they continued to be disappointed by the loss in accounts, in net number of accounts in that single office.

[878] Q Does the Bank of California attempt to develop all the bank services which are offered by the Na-

tional Bank of Commerce, or is their business more restricted to certain areas?

A Well, they attempt to develop all the kinds of services that they can. And it is a large bank, as you know, they have, in addition to their position here of many years standing, they do have the use of their California operations which refers a lot of business to them and is very helpful in the development and control of commercial accounts, but those things are directed and really are different than being able to compete in a banking market such as the City of Tacoma is.

Q Are the branches in Portland or Seattle a factor?

A I am not sure I understand the question.

Q I mean, does the Bank of California, a one-office bank, in Tacoma, get any benefit from their sister branches in Portland or Seattle and San Francisco?

A Yes, of course they do. These are the same kinds of benefits that are present where you have representation in major markets in the state or in a territory and/or a region.

Q In determining whether you would go into Spokane with a one-office bank, if it were legally possible to do so, is your position with your present correspondent banks [879] a factor?

A Yes, it is, and that would be a very serious consideration in deciding whether or not to go into a market by one means or another, or by any means, as a matter of fact. Of course, correspondent relationships involve balances, participations in loans, referrals of customers who may be moving from one part of the state or country to one served by you, and there are other matters, I suppose, that contribute to the value of such a relationship. The reason that that would be a factor of course in considering entry into a banking market would be that that bank would no longer consider you as a correspondent in the same sense that he had previously. You would suddenly become a competitor and so if you were in their market, competing with them in their market, they would soon look around and direct their profitable business to a correspondent who was not in competition with them in other areas.

Q How about the problem of committing the bank's resources to a possibly improved development?

A Well, we have—you're speaking about my comment about building a building and that sort of thing in Spokane and what we would have to do, I assume? The allocation of investment in fixed assets are one thing, and frankly the commitment of people to do a job in business [880] development or in the development of banking facilities is a serious one and one that requires a good deal of though and, hopefully, good judgment.

We are—national banks have a limit on the amount of their capital as to their maximum which they can put into fixed assets without seeking permission from the Comptroller of the Currency and, very frankly, our bank, at least, finds that it is bumping up against that ceiling all the time. Since I have been with the bank, this has been a matter that we have had to look at and obviously we are a sound, well run bank and we could get approval from the Comptroller for some temporary increase in our ceiling, which we actually had to do before the end of this last year, 1972, until we increased our capital by five million dollars from the transfer from undivided profits. But regardless of that, from our own standpoint this money or whatever we invest has to be productive, has to earn us a rate of return with which we can be satisfied. And to go back to my comment on Spokane, if we were to go into Spokane with a single banking office, to make any impact we would certainly feel we would need a fairly substantial investment in fixed assets. Salaries and costs of the kinds of people that we would put over there, again would be a very heavy drain on the assets of the bank which I [881] don't think we could afford.

Q Are there other alternative areas that you might better employ that capital, other cities in the state, for example, where Commerce doesn't have a banking office?

A Yes, there are. I think the most obvious one to me is Tacoma and from a personal standpoint I know more people in Tacoma in the business community proportionately than I do in Seattle because until I returned to Seattle, I had been away from Seattle until I returned from San Francisco, I had been away from Seattle for almost

fifteen years. Tacoma is in addition relatively close to our head office. It is in the western part of the state, which we think has probably a greater potential growth than maybe some other areas. It has an attractive location on Puget Sound with a fine port facility, which is very competitive with Seattle. And so I think the opportunity for growth in Tacoma would be good. From my own personal standpoint, from the distance involved and other things involved, I think it would be easier for me to decide that we could build a banking facility here in Tacoma than—I am speaking of building a banking business rather than a structure—that building a business here probably would be easier than we could in Spokane.

Q Incidentally, since your return from San Francisco [882] have you developed any business in Tacoma for the National Bank of Commerce in Seattle?

A Well, I think I can say very honestly that the reason I have not done so, and I have not, is that I am firmly convinced that a community thirty miles away from the Seattle banking market cannot be convenient for the customer. Regardless of our expertise and, very frankly, the very close friendships which I have with people in Tacoma, it would be ridiculous for me to suggest that they come over to Seattle to do business with me.

Q Do you find banking as a general rule to be typically localized nature of business?

A I certainly do.

Q Now, Mr. Faragher, does the National Bank of Commerce make residential mortgage loans?

A Yes, sir, it does.

Q Would that include FHA loans and VA loans?

A Yes, sir, it does. I have some statistics here which I can read very quickly, I think, to give you the feeling of our involvement in the real estate loan market. As of November 30th—approximately 77% of our loans—portfolios were conventional loans, 23% were FHA loans.

Q Just a minute now. This is residential mortgage loans [883] you're talking about now?

A Those are conventional, 77% conventional loans, and of that—excuse me, not of that,—included in the 77%

is conventional residential loans which 53% of our portfolios and conventional loans is 21% of our portfolio.

Q What is it in dollars?

A Conventional residential loans are $164,000,000. F. H. A. loans,—mostly one to four families, are $69,000,000. Commercial conventional loans are $65,000,000 and farm and VA loans are $10,000,000. The total should be $309,000,000. In the eleven months ending November 30th we made new loans of $100,000,000.

Q What is the current interest rate on these loans, or what are the levels?

A The current interest rate on conventional residential bank quality type mortgage loans in our bank is 6¾ to 7 per cent.

Q Is there a demand for this type of loan in the Spokane market?

A Yes, there is.

Q Do you know whether the Washington Trust Bank makes this type of loan?

A A relatively small amount.

Q Would these loans be available to the Spokane banking [884] market if the merger is approved?

A Yes, they would.

Q Does Commerce also make agricultural mortgage loans?

A Yes, sir, we do, and I think we have the best agricultural lending department in the region. For example, according to statistics that were published sometime during last year we were the 11th largest agricultural lender in the United States out of some thirteen thousand commercial banks. We had, including real estate agricultural loans, these are working loans and farm loans, we had $60,000,000 in agricultural credit plus about $10,000,000 in cattle loans which showed up on our commercial totals. One example I would like to give you of our expertise in agricultural credit, concerns problems that a bank in Oroville had during the last year. To my knowledge other banks took a look at the bank with the thought that somebody was going to have to take it over because it might have difficulty meeting its withdrawals, and both of those banks decided that it was such a tough agricultural prob-

lem to solve that they were not willing to negotiate with the owners of the bank to try to save it.

We sent our agricultural men and our auditors there and examiners who looked at it very carefully and decided that, while it would be a long hard fight and [885] that if we had another freeze in the orchards, for example, we might have a very serious problem, we felt that it was an obligation to that community and to the banking business to try and save it. So we got together an offer to the bank and were able to convince the Comptroller that the bank was about to get into serious difficulty and that the—the Supervisor, I should say—and that we were the only ones that were able to take care of it or were willing and that we had better go ahead and merge that bank. So far we have been able to keep the bank open and our deposits have grown since we have been there, and I think that the reception we have had in that community has been an excellent one.

[886] Q Do you have to have specialized types of personnel and expertise to service this field?

A We certainly do. We moved our best agricultural branch manager from one other location to Oroville, and gave him all the help we possibly could.

Q Do you know, is there a need for this type of loan in the City of Spokane?

A In that area.

Q Or in that area?

A Yes.

Q And if this merger is approved, will the merged bank offer that type of loan in Spokane?

A Yes, sir.

Q Does Washington Trust make that type of loan now?

A No.

Q Are there other types of loans that are not being made by Washington Trust Bank that would become available if the merger is approved?

A Yes, there are. Some of them are being made by them to some extent, but I think in total and overall the change would be very substantial. For example, we have

a great deal of expertise in the installment lending field, we have about $150,000,000 in installment loans on our books. This again is a field which requires a great deal of expertise, and I think we have an established reputation [887] in the field of financing automobiles, mobile homes, dealers of all kinds, in the installment area. The reason this is not an ordinary form of credit is that you ordinarily have to provide term financing for the dealer for part of your physical facilities, whether he is building a new one, or whether he is buying somebody else. And so we have term loans on the plant, equipment, we set up lines of credit for flooring cars, discounting contracts, and many of them now have leasing companies for which we also provide credit.

Q Does Washington Trust Bank offer that type of service?

A No, they do not.

Q And do you feel there is a need for that type of service in Spokane?

A I do.

Q And if the merger is approved, will that service become available?

A Yes, it will.

Q How about SBA loans?

A We have had a good deal of experience in SBA loans. We have approximately $16,000,000 outstanding in SBA loans at the present time, and as a matter of fact we were awarded a certificate during the last year for being the first bank in the United States to make an SBA guaranteed agro-business loan. This is a service [888] which previously was limited to industrial and manufacturing type credit, but it was expanded by the SBA, and our people were alert enough and smart enough in the agricultural field, as well as in dealing with the SBA, that we were able to put the first one on the books.

Q Just what is an agro-business loan?

A An agro-businuess loan is the term that is used to indicate that a farmer is in business just as a businessman is, or just as a manufacturer is, let's say. In these times of larger farms and more complicated financing and marketing and so on, the farmer has to be a businessman also, and I think this is the reason for the term.

Q Here again, do you need specialized personnel to offer this kind of loan?

A Yes, we do.

Q And do you have it?

A Yes, we do. Some years ago we hired Mr. Buck, whose name was mentioned earlier, as having previously been the deputy administrator for the Small Business Administration in Washington, to head up a term lending facility, and while Mr. Buck is not doing this at the present time, this service has been continued, and it has been a very important part of our activities. The [889] vice-chairman of our senior loan committee is shown as the man who is in charge of term lending. This of course includes larger loans, but it also includes loans to small business, where we think there is a distinct need not only to provide this kind of credit in what they speak of as a credit gap area, but where it is necessary to counsel with borrowers and qualify them for loans, and try to work with them to obtain their objectives in their own businesses.

Q Now, does the National Bank of Commerce make student loans?

A Yes, we do.

Q Can you tell us how much money you have out in student loans?

A We have been making student loans since very early in the game, after they became available, and as of the end of the last year, December of 1972, we had four and a half million dollars outstanding in insured student loans, and another one million one in vocational type student loans. These are loans for various training schools, other than universities. So the total of such credits outstanding is approximately 5.5 million dollars. We have over 4000 students who have been loaned money at the present time. These are 4320 students who have student loans from our bank, of the insured variety, and about [890] 1250 of the other kind. So it is a total of 5568. During 1972 we made over three and a half million dollars in student loans to 2514 students. That is in both categories, total categories.

Q Do you know, does Washington Trust Bank make these loans?

A No, they do not.

Q And if this merger is aproved, will this type of loan be available to the Spokane market?

A Yes, it will. This type of loan, I might mention, Mr. Moen, and I think the Court knows, that this is not a profitable undertaking as far as the bank is concerned. The interest rate on these loans is seven percent, and the government contributes an additional percentage to the bank, which I think varies from time to time, and which I am told now is three-quarters of one percent. There is no way in which a bank can come out in extending credit of this kind with the amount of time and the type of loan that it is, its size, and so on, but we started out by setting our sights in this area, that we thought it was something that we should do to help the community in which we were involved, and we have taken a look at it every six months or a year, and have increased those allocations and funds until it is now a very substantial amount.

[891] Q Now, how about lease financing?

A We do some lease financing. We have participated in some major airplane company equipment lease loans. We have leased some computers for some of our customers, and we have had some other experience in that field. We have a man who has spent some time in some larger banks, studying the matter. Quite frankly we are not a major lender, as far as dollars are concerned, but we know how to do it, and we are very much interested in extending our totals.

THE COURT: Counsel, are you going to take some little time more with this witness?

MR. MOEN: Yes, your Honor.

THE COURT: All right, this would be an appropriate time to take our afternoon recess. All right, court will be at recess.

[892] Q (By Mr. Moen) Immediately before recess, Mr. Faragher, you were testifying about lease financing; did I ask you whether you require specialized personnel for that type of loan?

A It does require specialized personnel. As I mentioned, we do not have large outstandings, but we have a young man who has studied the business and has spent time with some of our banking competitors in San Francisco talking about how they do it. So I think that we have the expertise.

Q And would this expertise be available to the Spokane market?

A Yes, it would.

Q And are there other types of mortgage loans that you haven't mentioned—or strike that. Let me ask that over again.

Are there any other types of loans that you haven't mentioned?

A Well, in the mortgage field there are interim type mortgage loans which are real estate mortgage loans during—usually during the construction period until the completion of a project, at which time the mortgage shifts to a final lender whose commitment protects the bank in the meantime. But it requires a great deal of care and judgment and expertise in handling that kind [893] of a loan to make sure that you follow every provision of the final takeout commitment exactly. And these loans are large and they represent risk, and we have very able people in that department.

In our headquarters office, for example, we have the two—the first and second men in our department both have the MAI certificate, which is similar to a CPA in the real estate field.

Q Are there any other reasons that you want to mention?

A We make economic opportunity loans which by definition are loans to minority people. They require a great deal of counseling and attention not only to help a man get his application in order but to stay with him and counsel with him after you have made the loan and to try to keep him from getting into trouble in his business. These are extremely expensive to handle, and we have not a great many in dollars but they represent quite a bit of effort on our part. I think that the total is less than half a million dollars. But we have had some—we

have learned a lot and we are continuing to dedicate some time and money to this segment of the community.

We have had some chargeoffs, but we still think we can handle that kind of a loan. I was told that the businesses that we are now financing have provided jobs [894] for 87 people in Seattle.

Q Is there any other type of loan?

A We have the—I guess you haven't asked me about regular commercial loans, have you?

Q I haven't asked you, no.

A We have a large portfolio of what we call commercial loans in excess of $350,000,000 in the bank, and I think we have well trained people with expertise that can handle any type of commercial loan situation. Our head office, for instance, is divided into divisions and our men specialize in contractor loans, all types of specialized types of credit. We finance a great deal of the salmon packing, for instance, which is important on the west side of the mountains, but we also handle very large lines of credit to the people in the food and fruit processing and packing businesses.

Q Now, with respect of this last group of loans that you testified to, do many of these types of loans require specialized personnel?

A Yes, they do.

Q And does Commerce have specialized personnel in these various areas?

A Yes, we do.

Q Does Washington Trust Bank?

A I think not in any degree to the extent that we have or [895] as broad a coverage as we have.

Q If this merger is approved will all those various types of loans be made available to the Spokane market?

A Yes, they will. I might mention one thing, Mr. Moen, in connection with the commercial loans, that I think is very important and has been alluded to previously in the courts.

The reputation that a bank has in providing credit to its commercial loan borrowers and to all of its borrowers on a basis on which they can feel that their needs are gong to be met, their legitimate needs are going to be

met, let's say, whether the money is tight or the money is easy, and I think our bank has established a reputation for sticking with its customers through thick and thin and through times when credit is tight as well as when it is easier.

For example, in the 1969-70 credit crunch when money was very tight, I think we were able to provide internally from our resources funds to take care of the normal legitimate needs of all of our worthy customers. We were not in a position where we had to turn the spicket off, for example. The size of our bank makes that possible and it would be very difficult for a smaller institution to be in that position.

Q Now, Mr. Faragher, I will direct your attention to [896] banking services other than loans and credit needs. I will ask you if there are new or additional banking services that Commerce would make available to the Spokane market?

A Some of these are new and some of them are additional types of service or maybe broader coverage. For example, in the trust field we have a very substantial trust department, 100 or 125 employees. We have specialists in all areas of trust investment, we have investment research men, we provide our own research from material that they gather and analyze internally, which is very difficult for a smaller bank to do. So that we have right on the grounds people who are able to counsel with our customers about their investments in our agency accounts or what we are trying to accomplish with the trusts that have been set up in the National Bank of Commerce for the benefit of beneficiaries.

We have, for example, nine or ten common trust funds which provide greater flexibility—great flexibility in investing for particularly smaller trust accounts which are not large enough to benefit from diversification within their own accounts, and we are able to invest the dollars that are left with us by men—by trustors in some of those trust funds and handle their account more efficiently than we would be able to do and [897] do a better job than if we did not have that flexibility in these trust funds.

As I say, we have ten of them and they are set up especially to accomplish specific purposes. I might say that the—we are very proud of the record that we have set in the management of those funds, and we compare them quarterly—monthly and quarterly with the Standard & Poores, Dow-Jones and the New York Stock Exchange composite indexes, and we find in the vast majority of them, we show a greater percentage change in valuation than the comparisons that we are making with the stock market averages that I have referred to. We are very proud of that expertise.

We have a division that handles estate planning and trying to counsel with customers and provide the best possible means for the handling and the distribution of their assets.

[898] Q Does Washington Trust Bank have a trust department?

A Yes, but it is very limited in size, and facilities, and services of the kind that I described.

Q And if the merger were approved, would Commerce extend or increase its services offered in the trust department?

A Yes, sir, we would.

Q Does the Old National Bank or Seattle-First National Bank offer a complete trust department service in Spokane?

A Yes, I believe they do. I think the entry of the National Bank of Commerce in Spokane would provide an additional and, in my personal opinion, a very well qualified alternate source for these services for the people in Spokane.

Q Any other services?

A Well, I referred to correspondent services I think earlier in connection with possible entry into Spokane. Correspondent services is a facility that we provide, and we have about $40,000,000 in deposits of banks who regard us as their principal, or one of their correspondents. Our location in the Federal Reserve System is very important in the handling of correspondent accounts of banks in communities around the state, around the region, and otherwise, and the facilities that we have which

involve all sorts of things, kinds of services [899] that we can perform for a correspondent are provided by the National Bank of Commerce.

Q Will you explain for the record, what are correspondent bank services?

A Well, correspondent bank services involve almost everything that is involved in a bank. For example, we have assisted banks in their building programs by having our building people go and talk with them, look at their plans. We have provided them with forms; we give them our operating manuals; we have just spent a lot of time and money setting up a security manual which is very important and required these days, and we have made that available to correspondent banks. We have research people in all kinds of equipment purchasing, so if someone wants to know what we buy for our bank, we are glad to help them and tell them what we think is the best to meet a particular need.

Q Who is your customer in a correspondent bank?

A Our customer is another bank. It is generally a smaller bank, at least those are the ones that require most of the services of the kind that I have described. There are many other services such as handling overline loans, participations, working with them in connection with their investment account, their bond purchases, and things of that sort.

[900] Q Check clearings?

A Yes.

Q Does Commerce have an international banking department?

A Yes, we do. I think it is probably the best international banking department in the region, and the coverage that we have is very very substantial. I might indicate that directly or through subsidiaries we have a branch office in London. And I might indicate that just as an example of the difficulty of a small bank getting into international operations on a large scale, the Bank of England has indicated now that they will not be receptive to the entry of a foreign bank into London with a branch unless it is at least a billion dollars in assets. So we have that branch in London, we have a subsidiary

office in New York, and one in Los Angeles. We have a representative office in Tokyo, we have five branches in Hong Kong, and a representative office in Singapore.

Q How many banks provide Commerce with foreign exchange information?

A Well, the field of foreign exchange involves many banks. We have correspondent relationships ourselves with approximately 900 banks around the world. We maintain accounts in almost all, practically all the major countries of the world, so that we own and carry [901] positions in foreign currencies which enable us to trade in those positions. We have in Seattle supplies of currency of most of the major countries of the world for the benefit of our customers who are traveling. We can provide business people with international exchange quotations immediately. We are one of the largest dealers in Canadian exchange I think, because of our location near Vancouver. We do a great deal of business there. We are in touch with our offices in the Orient and in London every day. We know their position on foreign exchange, in all currencies that they are authorized to handle, and are in a position to buy or sell those currencies for our customers.

[902] Q Does the National Bank of Commerce have an investment department?

A We have a very outstanding investment department and we provide, as indicated earlier, services to our correspondent banks in our investment department by assisting them with the investment of their funds, their excess funds which don't go into their loan portfolios.

This department also handles the bank's own investments in bonds, Treasury bonds and municipal bonds and we also work very closely with public treasurers, county treasurers, city treasurers and others who have excess funds which they need to invest for a short or a long period of time in the security market or in certificates of deposit.

Q Are these bonds of the public bodies such as counties and small cities, are they marketable?

A It depends on the size and how well known the issuing body is. The gentleman, the Spokane County

Treasurer, mentioned this fact, that the National Bank of Commerce had been known to be a bidder on small issues, I guess subsidiary public bond issues in areas where we are located in Spokane County, which is Medical Lake and Deer Park, as you know.

Our position is that we lend money to [903] individuals and corporations, and in a sense we lend money to public bodies by buying their bonds, in the areas where we operate, and we have made, we have a positive policy that we will bid on every issue that is offered that we feel meets our quality standards and which is legal, a generation obligation bond, where we are located, and we are quite successful. And we are aggressive in our bidding and we are quite successful in buying a good share of the issues that we bid on.

I would like to mention one specific example, Mr. Moen, which I think indicates an outstanding job that our investment department did. In 1969 or 1970, the Montesano, the County Treasurer in Montesano, had a problem. They were trying to build a courthouse and they had received authorization from the public to issue, I think it was, $2,000,000 in general obligation bonds to finance the courthouse. The enabling legislation or some other restriction limited the rate of interest at which those bonds could be offered. They found that they could not sell the bonds in the market and they went back to the public, I believe, and were turned down on increasing the ceiling, whatever it was, statutory, or the ceiling that had been set on their particular bond issue.

We have a branch in Montesano and our manager [904] got our investment department together with the County Treasurer and we decided we would buy the bonds. As I recall, there were no other bidders or nobody indicated any interest in buying the bonds and we bought them and they were able to go ahead with their construction of the County Courthouse. I can't say this from personal knowledge but I think if they asked them to call it the National Bank of Commerce Courthouse they would have done this, because they were so appreciative of the service that we gave them in that connection.

As a matter of fact, it turned out to be a pretty good investment as far as the bank was concerned, but at the same time they were unable to sell securities any place.

Q Does Commerce sometimes sell some of these bonds?

A Yes, we do have salesmen on our staff who are in the business of marketing municipal bonds that we buy. So we are buying them for our own account, and the rate on the bonds that I mentioned in Montesano were unattractive and we could not market those at that time, but we do buy bonds on a competitive bidding basis and our salesmen market them to correspondent banks or to individuals who are in the market to buy municipal bonds from time to time.

[905] Q Does that tend to increase or broaden the market?

A Yes, it certainly does.

Q And makes the marketing of the issue more economical?

THE COURT: Counsel, you may have a little objection there from Mr. Torre because you told him what the answer would be, as being too leading.

MR. TORRE: There is a lot of leading but—

THE COURT: Well, I wouldn't say there was a lot of leading but I would say those two are. Go ahead.

Q (By Mr. Moen) Does Commerce render computer service?

A Yes, we do, we bought a computer company, and I would have to guess, six or seven years ago, because it had two programs which seemed to be of interest to our customers. One was a payroll program and the other one was an accounts receivable and billing program. The payroll program is used by large and small firms but I think primarily has appealed to the small company. It eliminates the necessity of having a trained expert or payroll clerk because we not only prepare the checks from information that is submitted but we prepare withholding forms and reports to the tax agencies, and as you know, those are rather complicated and voluminous. And the other program, the accounts receiveable program which appeals to professional people

[906] and to small businesses, and we send out their bills for them and we have the checks come back to a locked box to the bank, and we deposit them, and we provide the company with aged reports on their outstanding receiveables and the collections that have been made.

Q Are there any other services that you would like to mention?

A I would like to mention one more in connection with municipal finance. The National Bank of Commerce was selected by the State Finance Commission on a bid basis about a year ago to be the fiscal agent of the State of Washington. This is the first time I believe in the history of the state that a bank located in the State of Washington was designated as a fiscal agent of the State of Washington. Previously this has been handled by New York banks. The job, of course, in that responsibility is to provide for the payment of coupons and matured bonds of all of the political divisions and subdivisions who wish to use this facility.

Previously, there is no compensation as far as fees are concerned for this service, but in the past, the way that the bank was compensated was by requiring that the public bodies deposit the funds to meet their matured bonds or coupons X number of days prior to the due date. This might be—and then that bank [907] would have the use of those funds and the public bodies of course would be out that much money for that length of time and it in effect would reduce its income for that period. The last New York bank that had this job in New York required that the funds be deposited I think twelve days before the maturity of the coupons or the bonds.

There is a tremendous amount of money involved, as you can imagine. The costs, or the savings to the public bodies and to the taxpayer and citizens by handling it on some less extended period of time would be quite substantial.

The National Bank of Commerce took a look at it and decided that we could bid on a zero day basis and so we entered our bids and were awarded the job on the basis that there was no lead time required and at the time

the bonds matured the money had to be in our hands and that was all.

Q Now, do you feel that there is a need in Spokane for these various services that you have described?

A I certainly do. We would be an important additional factor in the bidding and marketing of municipal bonds.

Q My question was attempting to cover all these services.

THE COURT: It was broad. All right.

Q In a very broad way, is there a need in Spokane [908] for all these different types of services that you described?

A Yes, I feel there is without any question.

Q You think that Washington Trust Bank can fill that need?

A I do not.

Q And do you think if the merger is approved that the expanded bank can?

A Yes, it can.

Q Now, Mr. Faragher, do you consider the National Bank of Commerce to be a vigorous and aggressive competitor?

A I certainly do. I think the services that I have mentioned and the types of loans that we make are evidence, and the record and the results indicate that.

Q Could you tell us just briefly how banks compete with each other?

A Well, banks compete in many ways. In extending all kinds of loans, soliciting loans, soliciting accounts, and if you have the ability, competing for branch locations, advertising. We do a lot of personal solicitation, we use radio, and when we can afford to, the television and any other means by which we can sell or attempt to sell our services to the public.

Q Do the banks ever compete pricewise?

A Well, yes, they do.

Q Now, when entering a new market has Commerce been [909] successful in retaining or increasing the business of an acquired bank?

A We have been successful in retaining and increasing the business of an acquired bank. I think in all three cases of acquisitions since my tenure with the National Bank of Commerce, the banks that we have acquired have grown, and I think it has been indicated in the manner with which we endeavor to serve the communities where we operate.

Q If the merger is approved would you expect Commerce to be a vigorous competitor in the Spokane market?

A I certainly would.

Q Do you consider Spokane to be a highly competitive market?

A I certainly do.

Q How about the entire state, do you consider banking to be competitive in the State of Washington?

A I certainly do.

Q If the merger is not approved is there any possibility in your opinion that Commerce would attempt to enter the Spokane market by any other method suggested by the Antitrust Division?

MR. TORRE: Objection, your Honor.

THE COURT: Well, that's the same question. You will have to re-word it the same way you did the [910] last question, Counsel.

MR. MOEN: There are a couple of other methods they have suggested here that I want to get into the record.

THE COURT: All right, go ahead.

Q (By Mr. Moen) Would Commerce consider buying a branch?

A No, for the reason that I don't know of any branches in the State of Washington that are available or that would be under any circumstances available. I have never heard of anyone offering a branch for sale in the State of Washington, and if they did offer it, I am sure it wouldn't be worth to buying.

Q Would Commerce consider trading one of its branches for a branch in Spokane?

A No, we would not, because we would have the same result that we speculated about as to the individual entry situation in a metropolitan market.

Q Could Commerce effectively compete in Spokane with a single branch office with no legal right to establish additional branches?

A No, we could not.

Q Did National Bank of Commerce, prior to the announcement of this merger, exert any influence in the Spokane banking market?

A Absolutely none.

Q If the merger is disapproved do you think it would [911] thereafter exert any such influence?

A I can't see how we could.

MR. MOEN: You may cross-examine.

THE COURT: Now who is going to do this?

MR. VERVEER: I will, your Honor.

THE COURT: Do you think you will be finished by 4:30? If you aren't, we are going to go until 5:00 o'clock.

CROSS-EXAMINATION

BY MR. VERVEER:

Q Mr. Faragher, I believe in answer to Mr. Moen's earlier question about whether or not it would be feasible to enter Spokane by any of the methods that have been suggested during the course of the trial, should the merger with Washington Trust Bank be enjoined, you said it would not be feasible. I would like to ask you why it wouldn't, just a very brief outline.

A I presume you are talking about the friendly bank, and the de novo type entry if legal, is that it?

Q Well, why don't we start there?

A I think I have explained my feeling about the inability—

THE COURT: Well, do you want him to go over that same thing about the Bank of the West, and the Pacific National going into Spokane, and the Old National Bank going into Seattle? Is that what you are [912] talking about?

MR. VERVEER: Well, I thought we could just get—

THE COURT: Well, there is no use going over that thing again is there?

MR. VERVEER: No, if Mr. Faragher gave all his reasons during direct, I don't want to go into it. I thought maybe because of the form of the question, which I took to be sort of an innovative step by counsel following an objection, that perhaps there was something more that Mr. Faragher wanted to bring out.

THE WITNESS: I don't really see the significance of your inquiry, I think I could add reasons why I wouldn't do it under any circumstances, but I think the ones I have stated ought to be sufficient.

Q (By Mr. Verveer) Mr. Faragher, you have said that the location of the Farmers and Merchants Bank in Opportunity was inadequate, and I believe you said you couldn't serve the Spokane banking market from there, from Opportunity. There is no question, is there, that the Farmers and Merchants' office is within the Spokane banking market, as stipulated, for purposes of this trial?

A No, there's no question. My point is that you can't serve the market from one unit bank which is located I [913] think eight miles east of the city center.

Q But it is in the banking market—

A Oh, yes.

Q —as a part of the banking market?

A Yes.

Q Could I ask you to look at Government's Exhibit I-5, please?

A Any particular part of that exhibit?

Q Do you recognize these to be minutes of an expansion committee meeting?

A Yes.

Q A meeting which took place in May of 1968?

A Yes.

Q And at which you were present?

A Yes.

Q Directing your attention, Mr. Faragher, to the last page headed "Airway Heights." The entry relates that Mr. Price reported on a recent visit to Airway Heights which has grown, but apparently doesn't amount to too much. The last sentence says, "It is too remote from Spokane to be a likely community for annexation."

Would you care to tell me the significance of that sentence?

A Well, it seems to me that whoever wrote the minutes which Mr. Price signed, indicated that he thought [914] Airway Heights was too remote a location from Spokane, that Airway Heights as a city, I think it was an incorporated city, that it was so far away from Spokane that it would not be likely to be annexed.

Q What is the significance of that from the perspective of the branch expansion committee?

A Well, I think the possibility that with an incorporated city we could establish a branch there, and might some day be annexed into Spokane.

Q And what would the significance of that be?

A Well, at least whoever wrote the minutes thought that this might be one way in which a branch of the National Bank of Commerce some time in the future, if it weren't too far from Spokane, might be annexed to the city.

Q Mr. Faragher, it is correct to state isn't it, that the National Bank of Commerce, with respect to some communities in the past, has located a branch, and this is within King County, has located a branch on the outskirts of some city, waited for the area to be annexed by the city, and then moved the branch into a more desirable commercial location? Isn't that true?

A Yes, that is correct.

Q And this refers to that method of obtaining a branch in the commercial section of Spokane, doesn't it?

A Yes, I think that is correct.

[915] Q But that would only be a single branch, wouldn't it, Mr. Faragher?

A That is correct, and it does not indicate that this action was taken by the bank, or even necessarily considered seriously.

THE COURT: What are we talking about, are we talking about that area up on top of the hill where the Spokane House is, the new Holiday Inn, is that Airway Heights?

THE WITNESS: I think this is the other way, your Honor.

MR. VERVEER: I believe it is west of town, your Honor. I might be able to locate it on this map.

THE COURT: Well, the area I was referring to was west of town. I go by there all the time, and I am wondering if that is what they call Airway Heights. That is on the way out to the airport. Is it on the main highway going west towards Ritsville in that area?

MR. MOEN: I think it is on the highway going west out towards Davenport, your Honor. That is the old highway.

THE COURT: Well, that is the old highway, yes, I know where that is.

MR. MOEN: And it is west of Spokane.

THE WITNESS: One time when I was in Spokane [916] on my way to the airport, or whatever I was doing out in that part of town, I drove by Airway Heights because somebody suggested that it was an unincorporated town without a bank, and my impression was that regardless of where it was located, there was no point in considering putting a branch in there.

[917] Q (By Mr. Verveer) May I just correct something, you said unincorporated, I am sure you meant to say incorporated?

A Yes.

Q I guess my point really wasn't whether or not Airway Heights—

THE COURT: I know what your point was, put a branch in there, if it became a part of Spokane sometime in the future, you could move a branch in the incorporated city limits to some other location.

MR. VERVEER: That is exactly it.

THE COURT: All right, go to the next question.

MR. VERVEER: It would only be one branch.

Q (By Mr. Verveer) Mr. Faragher, do you know if Opportunity is an incorporated city?

A I believe it is.

Q Are you certain about that?

A No, I am not—no, it is not.

Q It too could be annexed into the City of Spokane, I suppose?

A I believe that is possible, yes.

Q And it would be legal, if it were, I suppose, to—

THE COURT: Counsel, that is really speculation. Opportunity has been there a long time, you know. That is really speculative.

[918] THE WITNESS: I have been told by people in Spokane that—

THE COURT: Go ahead if you want to, but I wouldn't consider whether it is going to be or it isn't, because who knows. That is real speculative.

Q (By Mr. Verveer) Mr. Faragher, you gave some testimony about the experience of Old National Bank when they entered Seattle, and you indicated that it wasn't a factor and it hadn't made any dent on the banking business in Seattle. I wonder if you could provide more information about that?

MR. MOEN: What area? What is the question?

THE COURT: What kind of information?

MR. VERVEER: He gave some testimony which I took to be some opinion testimony based on one factor that I noted at least during his testimony which had to do with the increase in deposits, and I am wondering if—

THE COURT: If you will just pinpoint what you are asking, I will let you ask him the question, but further information about what? The Bank of the West sits on Third and Pine, I think, it was a state bank—

MR. VERVEER: It actually was known as Northwest Bank, your Honor.

[919] THE COURT: Northwest Bank, I'm sorry, Northwest Bank. I have been in it, it's on Third and Pine. I went in there and took a look at their furniture and fixtures one time.

Q (By Mr. Verveer) Have they done any correspondent business, Seattle correspondent business that you are aware of?

MR. MOEN: Has who?

Q (By Mr. Verveer) Has Old National Bank since its acquisition of Northwest Bank?

A I can't answer that. I would think that if they had done—in other words, what you are saying, have they been able to acquire any correspondent banking business, I have no way of knowing that. They have not been a

factor as far as we are concerned, and I would suspect that if they did acquire additional correspondent banking business, it would be handled in their large office at Third and Pine rather than at their Third and Columbia office. The Third and Pine office doesn't show any growth in deposits at all, so it wouldn't seem to me that if they did have any, it was significant.

Q Have they done any additional loan business that you are aware of?

A I have no way of knowing. They have not been a factor in the lending field as far as I am concerned, as far as [920] I know, and I have heard no one in my bank indicate that they are a factor.

Q Are you aware of whether or not they are performing any services for their Spokane customers or other Eastern Washington customers which heretofore they might have looked to a Seattle bank to perform?

A No, sir, I am not.

Q Is there any significant difference between Old National entering Seattle and the National Bank of Commerce entering Spokane in the fact that Seattle is a Federal Reserve city?

A There is that difference.

Q Could you spell that out, please?

A In what way?

Q Well, the fact that Seattle is a Federal Reserve city as I understand it may impose additional requirements on the banks in Seattle.

A Reserve requirements, do you mean?

Q Yes. Could you tell me about that, please?

A It's my recollection that at the time of entry of the Old National Bank into Seattle, I heard something about some modification of the Reserve requirements, but I'm not—it was only hearsay and I'm not an authority on the subject.

Q Is it possible that to avoid having the Federal Reserve [921] city requirements imposed upon it, a bank might desire not to increase its deposit base in Seattle too quickly?

THE COURT: Ask that a little slower so I can understand it, is it possible that a bank would refuse to accept

more deposits so that they wouldn't have the higher Federal Reserve limit imposed on them when they moved in?

MR. VERVEER: As I understand it, and I wish Mr. Faragher would correct me because I'm almost positive I'll be wrong at some point—

THE COURT: No, you aren't yet.

Q (By Mr. Verveer) A Federal Reserve bank located in a Federal Reserve city in any substantial way can have additional reserve requirements imposed on them, is that correct, Mr. Faragher?

A I think that's correct, yes, the reserve requirements at the time they entered were higher in Seattle than in Spokane.

Q And so if a bank—

A By the way, I'm not sure that that is still the same. There has been a recent change, as you are probably aware, in reserve requirements in the collection of checks by the Federal Reserve Bank, and I frankly can't tell you whether that affected the thing that you are talking about or not.

[922] Q How recent was that?

A It was in November or December, I believe, and it seems to me that there is now some uniformity in deposit—in reserve requirements between banks.

THE COURT: You went further, you asked him do you think that is one of the reasons—would that be a reason why they wouldn't accept new depositors?

MR. VERVEER: Not that they wouldn't accept new depositors but that they might want to get in the city in a relatively small way. They might not be too aggressive in terms of seeking new deposits.

THE WITNESS: It doesn't make any sense to me, but it might be.

THE COURT: It wouldn't mean anything to me, but maybe he can tell me, if he wants to, why any bank would ever do that. Of course, I don't know.

THE WITNESS: We operate on what is called a percentage fractional reserve system in which the reserves that you are required to set up are only a relatively small amount of the money that you gain by accepting the deposits, and it might be six or eight per cent of the

million dollars additional that you would be required to put on deposit with the Federal Reserve Bank. But that the other 94%, of course, you could invest in loans or in securities and that would be the net advantage. [923] You don't lose anything by taking any more, you just can't use all of it for investment or loan purposes.

Q Now, you adverted to your experience with the Bank of California in discussing problems of competing from a single office, and you used the word, I think, "difficult" or —it was "difficult" to compete; were you able to, nevertheless?

A It was a question in which the wording—it was not only difficult, it was frustrating and it was very aggravating because it was impossible to compete on a comparable basis. As I mentioned, I too had to rationalize in my own mind, as the present people here in the bank do, that I was doing a good job competing with the two—the head offices of those two banks, which are only a block or so away from me. But if I looked at their overall totals of deposit, they kept increasing and mine didn't, at least in anywhere near the proportion. And I still think I was aggressive and trying to compete, but I had no results or earnings to show for it in the final analysis.

Q Nevertheless, you were able to continue to increase?

A I didn't lie down and die but I didn't make any progress.

Q And does the Bank of California serve the people of the City of Tacoma?

A It does.

[924] Q Would you care to put an adverb on that, adequately, well, poorly?

A I think the question is not whether it serves the people—whether it serves its customers adequately and well. I think it is a substantial branch of the Bank of California with substantial assets outside the state in back of it. So its ability to serve the customers that it can get into the bank is, I think, beside the point.

The thing I am talking about is its ability to grow, serve more people and in effect compete in this total market. It can do a fine job with the people within walking distance or with those old customers who decide that for the

time being, at least, no matter what, they are going to continue their relationships with that bank. But eventually they get tired of driving X number of miles or they die and their son decides it's much easier to do business at the two branches that are down here on the flats where the Port Authority is or maybe there are three there now.

We used to have many customers from that area who decided that it wasn't worthwhile coming uptown.

Q Did the Bank of California here in Tacoma make a profit while you were running it?

A Certainly it did. It's a substantial bank. As I have indicated, I don't think that is the point that I am [925] trying to make in using it as an illustration. It's a $60,000,000 bank but it has been here for seventy years.

[926] Q I believe on direct you testified that in the sense that you had derived from your experience about ten years ago or so seem to be carrying through to the present and that someone in the Bank of California indicated that to you, that things had been frustrating or disappointing. Can I ask you who that was?

A Yes, it was the vice-president and assistant manager of the Bank of California in Tacoma whose name is William Rhodes, R-h-o-d-e-s.

Q You have testified that a single office in a city like Spokane just wouldn't work out, would it, from your perspective of economic use of the National Bank of Commerce resources. What about two offices?

A Well, I think the question of trying to provide the service for the Spokane metropolitan—the Spokane metropolitan market from two offices is just about the same as trying to provide it from one office.

Q What about five offices?

A Well, we have decided that—we have said that the Washington Trust Bank with eight offices and a solid foundation of customers and deposits within the office—within the metropolitan market would enable us to compete effectively with the other banks in the area. I really haven't thought about whether seven would be effective or six. It would depend on where they are [927] located, if they were all new, and this would not be any better than one, in my opinion. You would have to wait just

as long and you would have seven times the investment involved.

Q Of course, if the National Bank of Commerce did sponsor a bank from Spokane, sponsor if for among for other purposes, the hope or intent of eventually acquiring it, that bank could branch, couldn't it, until it was acquired?

MR. MOEN: We would have to assume it was legal and I think maybe we should have a definition of the word "sponsor" to know what he is talking about. That can encompass a lot of things.

THE COURT: Well, he wants to sell this one, the one over there, he wants them to go in and sponsor one and branch out. Now, go ahead and put it in, if you want to, I have heard about it before, but if you want to keep going at it, go ahead. All right.

He wants to know if you sponsored a branch, went out and got a lot of people to buy stock, made them loans, got a manager for them, built them—helped them build a building and all the rest of that, and then eventually might be able to branch that one because it was a state bank, you couldn't branch it as a national bank, could you?

[928] MR. VERVEER: Yes, your Honor, a national bank can branch to the same extent as a state bank.

THE COURT: I guess that's right. Then you acquire it and then you started a branch, that's what he wants to know.

MR. MOEN: A state bank couldn't branch for ten years.

MR. VERVEER: I am referring specifically to a national bank.

THE COURT: Well, he wants to know, could you do that?

THE WITNESS: The type of bank you describe, if it's a national bank or a state bank with its headquarters in Spokane, assuming that it is well managed and assuming it makes money and grows and is profitable and sound, it could apply to the supervisor, whoever he might be, for permission to open another branch. I assume if all those things that the supervisor requires in acting on an additional branch application were present, they

would get approval for a new branch. However, that takes quite a bit of time.

As you know, for a branch—for a new bank to show a profit, and I'm convinced that no supervisor would permit an additional branch unless the bank was profitable, and it gained back whatever it might have [929] lost during its organization period and shown that it could operate, that it had the expertise to operate another branch.

Q Mr. Faragher, did you hear the testimony that related to the Spokane National Bank, the bank which eventually was acquired by the National Bank of Washington?

A I have been here all week, I don't know what you specifically refer to.

Q Well, I was wondering, it seemed to me that we had heard some testimony that reflected kind of negatively on the branch bank in a hotel lobby. Could I ask you, did you hear the testimony that it had a branch at the time it was acquired?

A I'm not sure that I recall that, and I don't know that I have that—yes, the Pacific National acquired the bank, whatever its name was, Spokane National, I believe.

Q Actually, the National Bank of Washington acquired it in 1964?

A Yes, the National Bank of Washington, and on my chart here there is a line drawn which would indicate that it was done in the latter half of 1964, and the chart indicates that a Whitworth branch was established on May the 9th, 1963. I won't guarantee this, but that is what our internal record shows.

Q Are you familiar with the Olympic State Bank in [930] Port Angeles?

A In a general way.

Q Are you familiar with the Olympic National Bank in Port Angeles?

A Is that a new bank that has been started in Port Angeles just recently?

Q It is the Olympic State Bank converted to a national bank.

A Oh, I'm not that familiar with it, no.

Q Are you aware that it was granted a branch in Sequim shortly after it converted from a state bank to a national bank?

A No, I'm not, I didn't follow that.

Q You were not aware that that happened after it agreed to be purchased by Peoples National Bank of Washington?

MR. MOEN: He just answered that question, it's repetitious.

THE COURT: He says he doesn't know.

THE WITNESS: I am unaware of the situation, I really haven't followed that situation.

THE COURT: Peoples purchased it and then they got a branch at Sequim, is that what you said? All right.

Q (By Mr. Verveer) Mr. Faragher, I believe your testimony was that should you be prevented from entering Spokane [931] by the instant merger, that you felt you had other places for your investment of capital than in Spokane and gave as an example Tacoma, is that right, in terms of the expansion of your bank?

A Well, I used that as an example that I think indicated that if I were looking to do what you were—what you have described of trying to start out in one way or another, which I think is illegal, but in any event, if we could open a de novo office here legally, I think I have testified that I would prefer to do it in Tacoma or I would think that there would be better chances of success in doing it in Tacoma.

Q But your testimony wasn't that there were ready outlets for your bank's investment resources in Tacoma, for example?

A Well, we have many places where we need to invest money and people, but I don't think I implied there was any place to put it in Tacoma. We can't open a branch in Tacoma either.

Q You testified, I believe, in respect to Spokane it would be necessary to build a banking building, just why would it be necessary to build one?

A Well, I think I used that to illustrate the fact that the facility should be in keeping with the image of the bank in the first place, but secondly, sufficiently [932] large to provide a place for customers to come in and where we could assemble a staff of people to provide the services that I have discussed in detail. And that would require a fairly substantial, and if you want to use the word imposing a structure or facility, because people, you know, don't ordinarily flock to a bank that is opened up in a trailer, and banks provide facilities as part of the necessary—one necessary way of attracting business. So it is not—I didn't mean to limit—

THE COURT: I didn't really get all your answer. My secretary has to catch a bus at 5:00 o'clock, and I was telling the bailiff that she may leave. You were testifying about something, would you care to go back over that again?

THE WITNESS: If we were to go into Spokane as a de novo office, we would have to have something of substance. We would have to have a good sized facility where we could attract customers by sight, they would know we were there and know that we were a substantial institution, or get that impression by looking at it.

We would also have a number of people there that we would feel necessary to provide in Spokane to provide the services that I have talked about. If we [933] were merely going in there with four people, which we have started some branches with from time to time, there would be no hope of success at all.

Now, it is not necessary that we build a skyscraper, I did not imply that, but whether you build a building or whether you get somebody else to build it for you and rent it, you have the same obligation. I mean your expenses are substantial. You don't have to put the capital out, but you have to pay somebody else to put it out and you have to pay them a profit for doing so. There is a burden that you have to carry.

[934] Q But the rental of space is certainly conceivable, rather than building a new building?

A But the burden is just as heavy, and I think you have to pay more in rent on the long run than if you build your own building.

Q You testified I believe that correspondent relationships are important in deciding whether to enter a market where you have a good correspondent. How much was Washington Trust Bank's correspondent business worth to the National Bank of Commerce in 1972?

A I can't put a dollar figure on it. I think the balances that they carried with us represented a profitable earning possibility for the National Bank of Commerce, and I think more consistent with the case at hand is what that relationship might mean to the National Bank of Commerce in the future, and I think Mr. Stanton and I have become so well acquainted during the long delay that we have gone through in the last couple of years that the relationship of the Washington Trust Bank to the National Bank of Commerce is going to be an extremely valuable one.

Q Well, I would like to ask you again, couldn't you put some general idea of the magnitude—

THE COURT: What for? I mean why do you want to put a dollar amount on it?

[935] MR. VERVEER: An allegation has been made that the value of the correspondent relationship is one factor that would keep the National Bank of Commerce out of Spokane if this merger is enjoined. I would like to find out about how much that business is worth as a way of measuring the substantiality of that allegation.

THE COURT: In dollars?

MR. VERVEER: In a general sort of way, your Honor.

THE COURT: He just told you that he couldn't put a dollar figure on it. Didn't you tell him that?

THE WITNESS: Yes, I did. I don't think I have ever seen an analysis of the account, and as I said, I think whatever it is, it is relatively unimportant as compared with what it would be, what the relationship would be in the future if the merger were not consummated.

Q (By Mr. Verveer) Just so I understand that, you say what the relationship would be, you mean the dollar amounts in the future, is that correct?

A The value, the value of the account. I think Mr. Stanton and I understand each other's bank very clearly,

and I think he has a greater understanding of what kind of people we are, and what kind of services we can provide [936] for his bank, and I think it has been a wonderful opportunity as far as we are concerned.

THE COURT: That is one of the problems with three other lawyers helping you out, counsel, on cross-examination, it may take a little longer. All right, go ahead.

Q (By Mr. Verveer) Can you name any other banking organizations that have a more substantial impact on the Spokane market than N B C, assuming de novo or foothold entry?

A That do have?

THE COURT: Just a moment. He said assuming a de novo or a foothold entry. His voice dropped when he got to that part of it, so I want you to be sure and understand what his question was. Now his question is, do you know of any other bank or institution that would have more of an impact on the Spokane market, assuming a de novo or foothold entry.

A No, I can't think of any other.

Q Sir, we have had a lot of fun with this Hong Kong analogy right from the beginning in this case. May I ask how many branch offices you have in London?

A We have one office in London, but if I may clarify the answer to that question, our operation in London is almost entirely a money market operation. That means [937] that we do not deal in London with the man on the street. We have to be located in a location within convenient walking distance from the Bank of England, and that is really the only location criteria that must be met. The reason for that is that transactions go back and forth between banks, and they have to be hand-delivered from one office to another, but hardly anyone ever goes into our office in London. It is only 17 feet wide on the street frontage, for example, which doesn't provide room for more than one customer to come in at a time, and the volume of deposits, while you can see from our statement, is rather substantial. Those are in effect either bank funds which we borrow in the market and turn around and place in the market, or we make

some loans in London, but they are primarily loans to foreign corporations on the continent, loans to other banks, et cetera. It is not in any way comparable to Spokane. Hong Kong is a little different.

Q So a deposit base in London was not any consideration at all, in terms of your entry there, is that correct?

A Well, deposits technically are what we show on our balance sheet, which are some 250 or 300,000,000, and it is a factor, but location is not a factor in attracting those deposits.

May I amend that a little bit. Location as I [938] have explained is a factor because you have to be in the market, but you are not trying to attract deposits from the City of London, from the people.

Q Did you enter Hong Kong with that thought in mind, that you wanted to attract the business of people in the Crown Colony, that is, just the average citizen?

A I was not here when we made the entry into Hong Kong. I think Hong Kong—but my understanding of it was that Hong Kong was sort of a plan to provide facilities around the Pacific Rim for the National Bank of Commerce's customers, and we found when we got there we were called upon to make loans, and we weren't attracting deposits, as I mentioned earlier, from a single office.

Q But you got in to service customers, is that correct? Did I understand you correctly?

THE COURT: He can elaborate on that. Of course I sit here with certain knowledge about things that go on in Hong Kong, I try cases involving people who import from Hong Kong, et cetera. Now, go ahead and elaborate on that, what happens as far as Seattle and Hong Kong is concerned? That is what he wants to know.

THE WITNESS: There is a great deal of foreign activity, there is a great deal of international trade that comes out of Hong Kong, as you are aware. It is [939] an electronics, knitting, garment center, and important in that kind of trade. We in Hong Kong finance all kinds of customers of that kind. We finance a shipyard, I think

a flour mill, we finance rice dealers who buy rice and have certain privileges granted to them by the colony on condition that they keep certain inventories of rice available at all times. We finance a man who brings a product called ginseng into the colony, and he has I think an exclusive license and a requirement that he bring ginseng into the colony, and we give him a substantial line of credit for this purpose. We also serve customers on this side of the world who do business in the Orient through Hong Kong and through Singapore and through Tokyo. We are constantly in touch with customers on both sides who need to be put together, and try to provide a service. [940] Q Well, as for ginseng, the ginseng trade, maybe you could go on and—

A Well, I might say that ginseng is a very important product in the colonies, as you are aware, and there are many Chinese who will not permit themselves to move very far away from a supply. It has powers that are supposed to be very important.

THE COURT: All right, go ahead.

MR. VERVEER: I'd like to read a statement from Mr. Carlson's deposition of August the 16th and ask you if you agree in substance with the comments of Mr. Carlson—beginning on page 17, line 19?

THE COURT: I'll give him my copy. All right, line 19 and what page, counsel?

MR. VERVEER: Page 17, your Honor.

THE COURT: Let's see.

THE WITNESS: Could I just go back to get the gist of it?

THE COURT: Let him read the page before then he'll understand what's going on.

MR. VERVEER: I might note for the record that that conversation was motivated by a particular document—

THE COURT: Let him read the first page or two before that so that he can understand what's going on [941] because you're asking him whether he agrees with Mr. Carlson and it would probably be easier for him to answer if Mr. Carlson wasn't here but Mr. Carlson is here so—

MR. VERVEER: The document in question, your Honor, was Government's Exhibit No. F-21.

THE COURT: All right, maybe you wanted to look at that too.

MR. VERVEER: I believe it's attached to the back of that exhibit, your Honor.

THE COURT: Let me see what it is. F-21, all right.

THE WITNESS: That's dated 4-22-69?

MR. VERVEER: Yes, sir.

THE WITNESS: Well, I've read the memorandum and how far should I go?

MR. VERVEER: Why don't I read the part that is here—line 18 (reads).

"Q The third paragraph beginning—I've also pointed out to him—

A "Yes, I think if this merger had gone through prior to my retirement as president of the National Bank of Commerce, and I can't speak for the succeeding management, I had in mind that we would have a Spokane headquarters we would have a Yakima headquarters in addition to the [942] Seattle headquarters because I look upon this state as Eastern Washington, Central Washington and Western Washington.

Q "Would the establishment of an Eastern Washington headquarters facilitate and make more efficient the operation of the bank on a statewide basis?

A "Well, frankly, the third floor of the headquarters of the National Bank of Commerce is becoming too burdened with paper work and just when Mr. Faragher is going to do something about it I don't know but the paper work at the head office in connection with our decentralization is becoming burdensome." (end of reading)

THE COURT: All right, what do you want to know now, do you think it's burdensome?

MR. VERVEER: No, your Honor, I was wondering whether you agreed with Mr. Carlson's comment about Eastern Washington regional headquarters?

THE WITNESS: Well, he says that the regional headquarters or divisions are certainly common in banks and I have thought about them, yes, I don't know whether—I'm not sure about what you're asking me to agree

with you on, but he says—we would have a Yakima headquarters and so on—I think that's certainly a possibility which I have considered.

Q And should the merger with Washington Trust Bank go [943] through would you have an Eastern Washington regional headquarters in Spokane?

A I haven't made any decision on that subject.

Q Well, you really have no feeling on that as to whether it would be desirable or not from a standpoint of the bank?

A I think it might be desirable—I've made no decision on the subject and I have said to Mr. Stanton and I guess some of our managers in the northeast part of the state that maybe after we became acquainted with each other that they might find it convenient and comfortable to go into Spokane when they had a problem to talk about.

THE COURT: He's not hearing what you're saying. Repeat that.

MR. VERVEER: Would you please?

THE COURT: I didn't think you heard it—I did. Go ahead.

A I was saying that a regional headquarters or a division headquarters are common and not inconceivable, that it might be appropriate in our case—I've suggested that possibly to some of our managers in let's say Deer Park or Medical Lake instead of communicating with Seattle might wish to get in their car and drive into Spokane, if they wanted to talk over something or visit together.

[944] We have been unable to get some of our branches in that area on our computer and if the merger is approved or, I prefer to say—when it is approved—I think that we would establish a satellite computer arrangement in Spokane which would then permit us to bring those branches into the computer. So, there is a possibility then of something which might grow into a regional organization but as Mr. Carlson indicates here—we have had a decentralized organization for a long, long time and as you get bigger you're faced with the question of whether that is the best way to operate or not.

I have increased branch manager's reporting limits and we encourage branch managers to take all of the responsibility that they think they are capable of in handling their business in their community and respond to the needs of it and I think they do a wonderful job. And sometimes I am a little concerned that maybe a regional direction, a regional center removes some of that, that close cooperation and up and down communication that is so important if you're going to do a good job in your branch territories.

[945] Q Do you know about how many branches the National Bank of Commerce presently has within a hundred mile radius of Spokane?

THE COURT: Do you have a map that shows that?

MR. VERVEER: I do, your Honor, but I'd just as soon not put it in evidence.

THE COURT: You can't because the Clerk isn't here; you can't mark it, you'll have to wait until she comes back.

THE WITNESS: I really don't because that has never been a significant section of the country to group something in.

MR. VERVEER: Could I ask you if fifteen sounds just about right?

THE WITNESS: Within a hundred miles? That I think—you probably have the figures and if you say it's fifteen I'll agree with you.

Q (By Mr. Verveer) Assuming the approval of the merger between National Bank and the Washington Trust Bank—

THE COURT: Excuse me, would you ask—(addressing the law clerk regarding the Clerk's absence.)

Q (Continuing) Assuming the merger of the National Bank of Commerce and the Washington Trust Bank is approved, has the National Bank of Commerce decided on the loan reporting limits with respect to the former Washington [946] Trust Bank offices?

A No, we have not. I have told them that we have a great deal of confidence in the manner in which they have operated that office and we would hope that we could continue to operate it in a manner that would be

responsive to the needs of the community. In other words, we are not going to impose any limits on what they are doing and we hope to supplement, as I have indicated in many ways, the services that they can offer in the Spokane market.

Q So for example, a gentleman like Mr. Bennett, who testified last week, would come in seeking credit above a million dollars, they wouldn't be required to report that back to the loan committee in Seattle, they would just go ahead and grant the loan?

A We report loans to our loan committees and to our directors for approval purposes and confirmation purposes, but we do not have a "lending limit." Using the term as I used it, it is a report after the fact. Our policy in our bank is that every branch manager theoretically has the entire lending limits of the National Bank of Commerce to serve his community. And while we do not expect a manager in Deer Park to make a seven and a half million dollar loan, this is the kind of confidence we have in him and we expect him to exercise [947] it properly. This is an unusual delegation of authority and I think it is rather unique and yet one that we have found builds people and enables them to serve the community properly. This is a written policy of ours.

Q Could I ask you, from a legal standpoint do you know if this confirmation by the loan committee or the Board of Directors is necessary before the bank legally becomes obligated to extend credit?

A No, our officers are acting in accordance with their authority and their commitments would be binding on the bank and we would stand back of them. Is that what you mean?

Q Yes, it is. Now, Mr. Faragher, you testified earlier to a variety of services of one sort or another which would be made available in Spokane if the merger is approved. Could I ask if the National Bank of Commerce has conducted any studies as to the need for these services?

A I don't think I could say that we have conducted studies but we have talked with Mr. Stanton and his

associates at very great length over a period of two years during which time we have been preparing the application for the merger and discussing in detail all of the services in connection with this trial, and I think I have a very clear understanding of what is needed in Spokane [948] because I think they know.

Q So your testimony was derived from the conversations with the officials of the Washington Trust Bank?

A And in addition to my general experience as a banker in the State of Washington. I think I know generally the kind of services that are desired and needed in metropolitan communities.

Q I believe the first of the services you mentioned was the mortgage financing, residential financing. Well, let me amend that. I suppose it would be real estate financing would be best. Does the Seattle-First National Bank offer that service?

A Well, I'm sure they do, Mr. Verveer. I think the point that I tried to make in talking about all of the services that it is an additional opportunity and a competitive one that is very important to the people in Spokane. Certainly, many banks offer parts or may be all of the services. Seattle-First National is a large and important bank and we do not hesitate to take them on any time we can find them and we can do it in Spokane.

[949] Q Well, we can possibly shorten this a good bit if we could agree that for each and every service that you mentioned, Seattle-First and Old National also offer similar services. Would that be an unfair statement?

A I would like to not agree that they can do any of them as well as we can, but they are able to make mortgage loans and they do have an international department. We think that the scope of our international department is substantially in excess of theirs, and there are differences of degrees. But I would agree that some banks in Spokane can present all of those services in some way; they may not be as satisfactory as ours.

Q With respect particularly to the real estate mortgages, I noticed that you pointed out that the National Bank of Commerce has what appears to be about a

$79,000,000 interest in FHA and VA mortgages, does Coast Mortgage Company also participate in FHA and VA mortgage financing?

A They have been, I'm not completely clear on their present policy. But I would like to suggest that there is a considerable difference between the kind of FHA loans that a bank makes, in other words, bank quality, versus the kind that a mortgage company ordinarily might make. And I say I'm not sure what their present stand is. But, for example, we require a minimum of ten percent [950] down payment on FHA loans, whereas the vast volume of FHA financing is zero down, and we don't make those and they don't make the larger down payment ordinarily.

THE COURT: I just didn't want you to poke him while he was trying to listen. Now you can poke him and tell him what you want to ask. Go ahead. The reason I do that is because that is helpful to him to hear what he says, then he can ask the next question. Go ahead.

Q (By Mr. Verveer) Mr. Faragher, I believe you testified about the situation that developed with respect to the bank in Oroville, Washington and pointed out that the National Bank of Commerce had been able to rescue, I guess is the word you used, rescue that bank. That occurred since this particular suit was filed, did it not?

A Yes, I think it was in the spring of 1972 some time, maybe April.

Q With respect to installment lending, you pointed out, I believe—

A May I amplify just on that question, your Honor?

THE COURT: Do you mean about Oroville?

THE WITNESS: Yes.

THE COURT: Yes.

THE WITNESS: The bank was going broke and we [951] felt that it was necessary to do it whether the suit was in process or not.

THE COURT: I don't in any respect feel that you just went in there because you wanted to make a good impression on the Court at the time that this case was tried. If that's what you are getting at—is that what

you have in mind, Mr. Verveer? Whether they did it for that reason or not—let me put it this way, if they kept a bank from going broke, it would have some bearing on somebody's judgment as to the type of an organization they are with regard to the community. So it wouldn't make any difference, and I suppose everybody makes a move some time or another because they would like to have somebody think they are a nice fellow. If that's what you did it for, that's fine. I still think it was a good deed if that is true. So go ahead, I'm not concerned about that.

MR. VERVEER: We weren't impugning your motive.

THE COURT: You did ask him and I guess he got the impression, and I might have to, that you just thought they went in there because they were trying to impress some judge.

THE WITNESS: I also went to school, your Honor, with Mr. Lund, who was the president of the bank, and I felt that we would—we ought to try and help him [952] out and rescue some of the investments he had in the bank.

THE COURT: That is one of the problems, Mr. Faragher, and Mr. Verveer, with a judge who sits in the City of Tacoma and sits in the City of Spokane, he knows so many people involved in this whole situation that somebody might get the impression that you are going to decide it on who is the most friendly to you, the fellow from Seattle-First or the fellow from N B of C or from Washington Trust. But, of course, we don't decide cases that way, and if I disqualified myself every time I knew somebody, I would never try a case in Tacoma or Spokane. I know quite a few people, and I have known Mr. Faragher since he came to Tacoma. Isn't that right?

THE WITNESS: Yes, sir.

THE COURT: Okay, go ahead.

Q (By Mr. Verveer) With respect to your testimony about installment lending, you pointed out that the National Bank of Commerce has been quite active in the area of automobiles and I guess perhaps recreational trailers?

A House trailers.

Q House trailers and financing dealers. Were you here this morning when the gentleman testified—the gentleman who owned the Kenworth truck dealership that [953] testified that he was getting financing from Washington Trust Bank?

A Yes.

Q With respect to the student loans, I believe you testified that these were not profitable items, is that correct?

A That is certainly true.

Q Do you have any quotas on student loans?

A For control purposes from time to time we have said we would take a look at another million or two and we keep increasing the commitment and would continue to increase it if we went into the Spokane market to take care of the people that would be in our community over there.

Q Could you tell me again how many students have benefitted from these loans in the past year?

A Yes, sir, we have on the book loans to 5568 students. I have mentioned, I think, about three-quarters of those are insured and the others are vocational type students, training schools and that sort of thing. But during 1972 we made 2514 student loans, about half and half in those two categories.

Q Do you have any records at all that indicate where you made those loans?

A No, I don't. Do you mean to where the people lived or [954] something like that?

Q From what branches they were originated geographically?

A No.

[955] Q Was it necessary under your quota system to turn any student down for such loans?

THE COURT: What do you mean, quota system?

MR. VERVEER: The fact that they have imposed some sort of a quota—

THE WITNESS: We have never—

THE COURT: I don't understand what you are talking about. Let's get this straight, what do you mean "quota system"?

MR. VERVEER: I had thought and I may have misunderstood Mr. Faragher, that he had testified that because these loans are not profitable, that it was necessary for control purposes to put a certain upper limit on the dollar amount.

THE COURT: I didn't hear him say that.

THE WITNESS: No, I didn't mean to imply that, your Honor. I think I mentioned that we were setting a figure that will make—for control purposes, not restrictive, but merely to take a look at them and see what our experience is after six months or after a year and see whether we are having reasonably good experience and whether we can afford to continue. We have never—

THE COURT: They are not profitable is what he has told us.

THE WITNESS: Yes, sir.

[956] THE COURT: Therefore, he wants to keep taking a look at them and see how unprofitable they are from time to time. Is that the idea?

THE WITNESS: Yes, your Honor.

THE COURT: All right, I understand.

THE WITNESS: We have never turned anybody down because we were up to the four million limit that we looked at as a guideline. I won't say we have never turned anybody down, I think that is highly unlikely. I mean I think we have turned people down but not because of any control figure that we have set up. I would rather refer to it as, I guess, a control figure rather than a limit because we have not used it in any way.

THE COURT: All right.

Q (By Mr. Verveer) I believe you testified that you had—the bank had made something less than half a million dollars in economic opportunity loans; are these loans profitable?

THE COURT: He said they weren't, he said there was a lot of chargeoffs in that area, but to be good citizens they thought they would try to keep going even though it wasn't profitable. And there were a lot of chargeoffs, isn't that what you said?

THE WITNESS: Yes, your Honor.

[957] THE COURT: I recall his testimony in that respect.

THE WITNESS: We are committed to and we have trained a good many young people in the minority group, and as part of good citizenship, we encourage our staff to perform this type of service. A lot of it is after hours and it is a real tough job.

THE COURT: All right, next.

Q (By Mr. Verveer) With respect to commercial loans and in connection with tight credit situations, I believe it was your testimony that you were careful to always meet the normal needs of customers, is that right?

A I said that.

Q Does that imply in any way if a customer suddenly decided he wanted to expand his business during a tight money situation, that you might be unable to accommodate him?

A I think the reason I used the word was that our commitment is to take care of his normal needs. If he decides all of a sudden to buy a business twenty times his size, we would want to have a chance to sit down and talk about it.

THE COURT: I think I recall his testimony, I just don't think we are gaining any ground here. What he said is very plain to me. You were going to take care of the normal needs of your customers, you [958] weren't going to let them go begging just because money was tight. All right, let's go ahead with the next question.

Q (By Mr. Verveer) With respect to international banking services, do you know, Mr. Faragher, whether Washington Trust Bank gets correspondent help in the way of international services?

A Where they get correspondent help?

Q That's right. From who they obtain assistance in the area of international banking.

A I have had a discussion with them about the possibility of having one of their people come over and visit with one of ours.

THE COURT: He wants to know where they do it now.

THE WITNESS: I don't know.

THE COURT: Okay.

THE WITNESS: I don't know if we have any or not. I can't answer that.

Q (By Mr. Verveer) Could I ask you if Chase Manhattan Bank has any?

A I can't answer that. I imagine if they do it is in connection with foreign drafts and that sort of thing, which is rather a routine operation.

Q Do you know where Washington Trust Bank presently gets [959] its research services from?

A No, sir, I don't.

THE COURT: Those questions should have been more properly posed to Mr. Stanton, he would know.

MR. VERVEER: I raised them in connection with the suggestion that the National Bank of Commerce apparently did a better job than Washington Trust Bank in that area.

THE COURT: Well, all right.

Q (By Mr. Verveer) With respect to your testimony about computer services, you mentioned the payroll preparation services and accounts receivable billing; aren't there numerous companies in addition to banks that offer such services?

A It is quite a competitive field. I was just indicating that we had some expertise in it.

Q You said you never heard of banks in the State of Washington buying branches. Have you ever heard of anything like that in California?

THE COURT: How does that help me out, Counsel, in this case? What good would that do me to know about California? I want to know about this situation.

[960] MR. VERVEER: We have no further questions.

THE COURT: All right, Mr. Moen, I take it you don't have any either? I hope.

MR. MOEN: No redirect.

MR. HARTMAN: The intervenor has no questions.

THE COURT: All right, you have no further questions either. Now, Mr. Faragher, you may step down.

Now, we're going to make it tomorrow, aren't we?

MR. MOEN: I think so. I am sorry if I misled you.

THE COURT: No, that is all right. Then we will conclude, and if you need a lot of time to argue, then I will hear all of the argument. We are going to finish tomorrow, aren't we?

MR. TORRE: We have a rebuttal witness on Wednesday, your Honor.

THE COURT: Well, Mr. Moen has two more witnesses, and I know we're not going to take all day on those.

MR. MOEN: One of them is a very short witness, your Honor.

MR. HARTMAN: And I have one witness.

THE COURT: A long one, a short one or a medium one?

[961] MR. HARTMAN: A medium one. Not as short as the one this morning.

THE COURT: All right. Now, where is your rebuttal witness, Mr. Torre, is he here?

MR. TORRE: Yes, but he won't be able to be here until Wednesday. He will be in a meeting in Seattle until 4:15.

THE COURT: Who is it?

MR. TORRE: He is an officer with Pacific National Bank.

THE COURT: Well, what I don't want to do is wind up tomorrow and then have a lot of time where we sit around and wait, you see, and that is what I am trying to avoid, because I don't like to have interruptions, recess-time, and that is exactly what is going to happen here, because we are going to be through by noon tomorrow.

MR. TORRE: I think that is a litle optimistic, your Honor.

THE COURT: Well, I don't think it is at all, and I think you will find that out, unless I am greatly surprised by the amount of testimony, because I don't think that the testimony is going to last longer than between 9:30 tomorrow morning and noon. We have had a couple of long witnesses, what he told me were long [962] witnesses, on today, Mr. Stanton and Mr. Faragher. He thought they were going to take a lot longer, didn't you Mr. Moen?

MR. MOEN: I have only one witness that I consider a very short witness, who may not take more than ten to fifteen minutes. My second witness might take an hour or an hour and a half on direct, and then after that it is up to them how long they will cross-examine.

THE COURT: I don't think you will take over an hour and a half on direct either. I am just guessing, you see, because we have covered the waterfront on this case pretty well, haven't we? There is no use being repetitious about the thing. I don't know who your witness is, but is he another—

MR. HARTMAN: Your Honor, my witness is the regional administrator of the Thirteenth National Banking Region. I expect he may take a half an hour, something like that.

THE COURT: All right, when do you say your man is going to be available?

MR. TORRE: Well, he is subpoenaed to be here Wednesday morning.

THE COURT: Well, why don't you call him and see if he can be here tomorrow at 1:30, and maybe we can [963] get through with him in an hour.

MR. VERVEER: Your Honor, he definitely can't be here at 1:30. Perhaps we could get him here during noontime, if your Honor would be willing to sit here and hear it.

THE COURT: Well, I would like to have all of the testimony concluded at one time. What is his name?

MR. VERVEER: Robert Hurni, your Honor.

THE COURT: Well, let's get the testimony over with. Do you think he could be here at 11:30 tomorrow, and then we could conclude with him in an hour or so?

MR. SILVERMAN: Your Honor, I can go and call him.

THE COURT: All right, call him and ask him when he can come over here, so we can get the testimony all in.

MR. TORRE: May I ask a question, your Honor?

THE COURT: Yes.

MR. TORRE: Do you want final or oral argument right after the testimony?

THE COURT: No, that is the point, I am going to let you marshal your material and so forth and hear you Wednesday morning, we will probably start at 9:00 o'clock, and I will listen to both sides on Wednesday morning. I think that would be an appropriate way, you [964] see after all the testimony is in and that is going to give me an opportunity to look over the law again and get ready for you, and listen to your arguments. That would be an orderly way to conclude the case, but I don't like to do it and then have more testimony you see. That is what I am talking about. I will listen to you Wednesday morning, and that will give you all Tuesday afternoon, and I think that is about what is going to happen, to put your argument together. I want you to touch on every contention that you are making at the time you argue, cite the cases to support your position, so I can decide the case from the bench as I told you I was going to. I don't believe in making people wait three, four, five months taking it under advisement, and have you worry about when I am going to decide it, and be up tight about it, and co-counsel asking what is the matter with him, and counsel will say well, I don't want to call him because he might decide against me if I do. I have gone through that and I don't believe in it. By doing that I don't have to double the work, I don't have to take it home with me, or that type of thing. All right, we will wait and see about Mr. Hurni.

You have got a daily copy on this, haven't you?

MR. TORRE: Yes.

[965] THE COURT: You have a record of everything that has gone on every day, right after it is over with practically.

All right, Mr. Silverman what is the answer?

MR. SILVERMAN: Your Honor, Mr. Hurni says he is leaving for Seattle at 10:30 tomorrow morning and not returning until 4:30.

THE COURT: What is he doing, going over there for a bank meeting?

MR. SILVERMAN: Yes.

THE COURT: Well, I just think you better have him here or forget him, because I don't think his bank meeting is more important than to have his testimony here. I think

you ought to get a subpoena out for him. I know they can do without him, I know the Pacific National Bank of Washington, and almost all of the people in it, and I just don't think it could be that important. He may be a loan officer but get a subpoena out for him and get him over here tomorrow if you need him.

All right, that is the answer to that. Court will be at recess until 9:00 o'clock tomorrow morning.

[966] REPORTERS' CERTIFICATE

WE, W. L. Mayrand, Gerald J. Popelka and Paul C. Tveten, Official Court Reporters for the United States District Court, for the Western District of Washington, do hereby certify that the annexed and foregoing is a full, true and correct transcript of proceedings had in the above-entitled and numbered cause, on the date hereinbefore set forth, and we do further certify that the same has been prepared by us or under our direction.

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